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S U P P L E M E N T

T O

F O R M S O F W R I T I N G S

U S E D I N S C O T L A N D ,

I N T H E M O S T C O M M O N C A S E S ;

In so far as relates to Moveables, or personal
Rights and Securities.

W I T H

T H E P R I N C I P L E S O F T H E L A W

C O N N E C T E D T H E R E W I T H .

In a manner so plain and simple, as not to require
any previous practice of the Law for using
them.

B Y A N T H O N Y M A C M I L L A N .

Author of the *Forms of Writings*.

E D I N B U R G H :

P R I N T E D F O R E L P H I N G S T O N B A L F O U R .

M . D C C . L X X X V I .

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E R R A T A.

Page 96. line 3. from the bottom, for <i>decree</i> ,	
<i>decreets</i>	
— 99. — 8. for <i>sums</i> , read <i>sum</i>	
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— 118. — 1. after <i>balance</i> add <i>of the invoices</i>	
— 125. — last for <i>L. L.</i> read <i>S. S.</i>	
— 129. — 2. from the bottom for <i>juditure</i>	
read <i>judicature</i>	
— 139. — 2. after — add (<i>or as the case</i> <i>may be of a curator, chosen by</i> <i>minors, or a tutor of, or da-</i> <i>tive</i>	
— 141. — 9. dele <i>tutors and</i>	
— — 3. from the bottom for <i>title</i> read <i>little</i>	
— 143. — 2. from the bottom for <i>verily</i> read <i>verity</i>	
— 152. — 13. &c. read, in presence of A. N. J. W. A. B. L. S. <i>in his own right, and as guar-</i> <i>dian of the persons, &c.</i>	
— 172. — 10. after &c. add <i>Tit. VI.</i>	
— 187. — 9. dele <i>so</i>	

T I T L E I.

Bonds.

I N T R O D U C T I O N.

IT has with reason been maintained, that, to the loss of innocence, mankind owes the invention of many of the arts and sciences. Had every man persisted in a steady observance of the dictates of reason and conscience himself, and without thinking evil of any other, the necessity of writ-

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ten

ten vouchers and instructions of obligations and transactions had never existed, judges had never been appointed, nor courts established to enforce the performance of them ;—the performance of what no man in that case would have ever refused. But, as matters now stand, to the want of confidence in men, arising either from a suspicious turn of mind, from knowledge of the world, or experience of the many instances of breach of good faith therein, we may ascribe the use of written rights and securities, and to the anxious concern of parties in providing against every advantage which might be taken of them, that tediousness and prolixity of expression so much complained of in the stiles or forms of writings. The practitioners in the art of conveyancing no doubt found it their interest to fall in with the prevalent humour

mour of their employers. Forms also once established, have long remained, lest, by adopting a more plain, simple, and sometimes more intelligible manner of expression, the security of parties should have been rendered more slender.

Having premised so much, I shall now proceed to treat of a few Forms of Writings which occur in common practice, with the principles of law corresponding thereto, in supplement of a former performance of that nature: And, in prosecution of this plan, I shall begin with a bond of corroboration, which may be in the following form.

Bond of Corroboration.

KNOW all men by these presents, me
A. B—— in C. Whereas I by my bond
dated the —— day of ——
years, (for the causes therein specified,) bound and obliged me, my heirs, executors, and successors, to make payment to C. D—— in E. his heirs, executors, or assignees, of the sum of —— pounds Sterling, and that at and against the term of Whitsunday then next; with —— pounds money foresaid of penalty and liquidate expences in case of failzie; together also with the due and ordinary annualrent of the said principal sum, from the said —— day of —— to the said term of payment, and yearly, termly, and proportionally thereafter, during
the

the not payment ; as the said bond more fully bears. As also, the said C. D—— by his bill, dated the —— day of —— drawn by him upon, and accepted by me, ordered me —— after date, to have paid to him or order, the sum of —— pounds Sterling for value, as the said bill bears. And likewise I the said A. B—— am justly resting, owing, and addebted to the said C. D—— the sum of —— conform to accompt commencing the —— day of —— and ending the —— day of —— last ; as the said accompt also bears. *And whereas* the foresaid principal sum of —— pounds Sterling, and annualrent thereof from and since the —— day of —— contained in, and due by the bond above mentioned, and the foresaid other principal sum of —— and annualrent there-

of from and since the — day of —
when the same fell due, contained in the
bill above mentioned, and the foresaid
third principal sum of — contained in
the accompt before mentioned, are wholly
resting, owing, and unpaid; which
two principal sums contained in the said
bond and bill, with the annualrents due
thereon, with the foresaid sum of —
contained in the accompt before recited,
being accumulated, do extend, at the
date hereof, to the sum of — pounds
Sterling. *And seeing* the said C. D. is
willing, at my desire, to delay the pay-
ment of the said accumulated sum until the
term of payment after mentioned, upon
my granting these presents, *Therefore,*
without prejudice of the bond, bill, and
accompt above recited, but in further
corroboration thereof, *wit ye me to be*
bound

bound and obliged, *as* I by these presents
bind and *oblige* me, my heirs, executors,
and successors, to make payment to the said
C. D. his heirs, executors, or assignees, of
the foresaid accumulated principal sum of
——— Sterling, betwixt the date here-
of and the term of Martinmas next to
come, with the sum of ——— money
foresaid of penalty and liquidate expen-
ces in case of failzie, together also with
the due and ordinary annualrent of the
said accumulated principal sum from the
date hereof to the term of payment above
written, and thereafter yearly, termly,
and proportionally, during the not pay-
ment thereof; without prejudice always
to him to suit and use all manner of di-
ligence and execution hereupon, or upon
the said bond, bill, and accompt, or both,
after

after the said term of payment. Registration.

OBSERVATIONS.

The accumulating of principal sums and interest into one principal sum, bearing interest, and making accompts to bear interest, are the most common causes of taking bonds of corroboration. Where the debtor is willing, they may sometimes also save the trouble and expence of a decret constituting a debt ; they may be granted, by persons after majority, of bonds, &c. entered into by their tutors, or by themselves and their curators in their minority, to serve for a ratification thereof, and bar revocation within the *quadriennium utile*, a term of four years after

after majority allowed by law within which to revoke deeds done to their prejudice in minority; or, they may be granted by an heir to a tailzied estate, who is not liable for the debts of his predecessor in that estate, unless he, by some act or deed of his own, oblige himself to pay them.

In case of a bond of corroboration by a person after majority, it will be in these terms: ‘ Be, &c. me A. B. ——— in
‘ C. Whereas J. E. my mother, and F.
‘ G. of ——— two and a quorum of the
‘ tutors nominated to me by J. B. late
‘ of ——— my father, by their bond,
‘ dated,’ &c. (narrate it ;—or whether the tutors were nominate of law, or dative ;) ‘ and which sums contained in the
‘ said bond were applied to my use and
‘ advan-

‘ advantage. And seeing,’ &c.—Or,
 ‘ Whereas I by my bond dated, &c. with
 ‘ consent of J. E. my mother, and F. G.
 ‘ of ——— two and a quorum of the
 ‘ curators nominated to me by J. B. late
 ‘ of ——— my father,’ &c. And a bond
 by an heir of tailzie will begin thus :
 ‘ *Be, &c. me A. B. of C. son and heir of*
 ‘ *tailzie and provision, served and retour-*
 ‘ *ed to the deceased J. B. of C. Whereas*
 ‘ *the said J. B. my father, by his bond,*
 ‘ *&c. And seeing,*’ &c.

Bond of Interdiction.

INTERDICTION is a legal restraint,
 laid upon a person who is profuse, pro-
 digal, or liable to be imposed upon, from
 signing any deed to his prejudice, without
 the

the consent of his interdictors. It is either voluntary or judicial. A voluntary interdiction proceeds on a bond by the person, wherein he obliges himself to do no deed which may affect his estate without the consent of certain friends therein mentioned; and it may be taken off by a sentence of the Court of Session, declaring either that there was no sufficient ground for it, or that the party is now become *rei sue providus*; or by the joint act of the person interdicted, and his interdictors agreeing to take it off; or where the bond requires a certain number as a quorum, or is for a certain period, the restraint is taken off when the number is diminished by death, or the period expired. A judicial interdiction is imposed by a sentence of the Court of Session, on an action brought by the nearest of kin

to

to the party ; or, from the *nobile officium* of the court when they perceive, in the course of an action, that any of the litigants appear subject to imposition. This fort must be taken off by the same authority that imposed it.

An interdiction must be published by raising letters of publication of interdiction thereon, which pass of course, like hornings or inhibitions, and by executing them against the person interdicted, and at the market-cross of the jurisdiction where the person resides, and registration thereof with the executions, both in the books of the shire where he lives, and his lands lie ; or, in the general register at Edinburgh, within forty days after publication. They at present affect only heritage, and do not extend to moveables.

The

The form of a bond of interdiction may be as follows :

Know all men by these presents, *That* I A. B. of C. being sensible of the easiness and openness of my disposition, whereby I am exposed to the devices and solicitations of designing men, and reposing entire confidence in the friendship and integrity, knowledge and experience, of the persons after named, for assisting me in the management of my affairs, *have*, for the better preservation of my family and estate, *interdicted*, and hereby *do interdict* myself *simpliciter*, to C. D. in E. F. G. in H. and J. K. in L. or survivors or survivor of them, any two of which persons accepting and surviving, I hereby declare to be a quorum while more than two are alive, and after the decease of a-

B

ny

ny of the said persons, the survivors or survivor, during the space of thirty years next after the date hereof: *And I bind and oblige myself*, during the said space, neither to sell, gift, impignorate, nor dispose any of the lands, or other heritages whatsoever, belonging to me, or any part thereof; nor to grant any dispositions, infeftments of annualrent, assignations, resignations, renunciations, or other rights or securities of the same; nor to set tacks or rentals thereof, nor to grant any other right thereto, or security thereon, redeemable or irredeemable, to any person or persons; also, not to execute any obligations, contracts, or other deeds for any sum of money, or bargain whatsoever; nor to bind or enact myself as cautioner or surety for any person or persons upon any cause or occasion whatsoever: And
in

in general, to do no fact or deed, directly or indirectly, whereby the said lands, heritages, or other subjects belonging to me, may be anywise evicted or adjudged from me, or burdened or affected any manner of way, without the special advice and consent of the saids C. D. F. G. and J. K. or quorum foresaid, had or obtained thereto in writing; declaring hereby, that all alienations, impignorrations, dispositions, infeftments, tacks, contracts, obligations, or any other writs or deeds whatsoever to be granted by me without the consent of the said persons, or quorum foresaid, adhibited thereto, shall be null and void, and of no avail, force, strength, or effect; *and I agree* that letters be raised hereupon for publication hereof, and that the same, and executions thereof with these presents, be registered

in the general or particular register of inhibitions, interdictions, &c. *And for more security, I also consent* to the registration hereof in the books of council and session, or others competent, therein to remain for preservation, *et ad futuram rei memoriam*; and thereto constitute

my procurators, &c. In witness, &c.

A person may be named ‘*sine quo non*’ while in life,’ here as well as in a nomination of tutors and curators.

T I T.

T I T. II.

Disposition of Moveables.

HAVING, in the other part of this work, defined moveables, and treated of the manner of transmission thereof from the dead to the living, whether by law, or by destination of the proprietor: It remains to say something of the method of acquiring and conveying the property of them *inter vivos*.

If we conclude, that the useful animals, in the first ages of the world, stray-

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ed about wild, then the first occupant, or he who caught, tamed, and fed them, would acquire a property therein ; either by the simple right of occupancy, according to some writers, or according to others, as having, by his own labour and industry in so doing, acquired a natural right thereto. This property would pass from such person by tradition and possession ; or, as the ideas of property were then very faint, by allowing them to return to the original liberty, and neglecting them for any considerable length of time, they would become the property of the next occupant. Tradition when for a valuable consideration, and where the quantity was considerable, would be made before a great concourse of people ; a practice which is still observed in this kingdom in the sale and delivery of the
stocking

stocking in a sheep farm ; and which happens daily in the sale of cattle in a public market. With regard to the other case, of cattle strayed from the owner ; by the feudal system, introduced by the Goths and Vandals on their overthrowing the Roman empire, to secure their conquests, and adopted by most of the princes of Europe, the King is considered as the supreme lord of all the lands in the kingdom ; the proprietors as his tenants ; the tenants as the landlords servants, who have a certain part of the stock or crop for their trouble and management, and the rest held to be the master's or landlord's. This is most obvious in rent paid in kind. From this arises the right of hypothec ; and this general principle of law, that cattle strayed for which no owner can be got within year and day after
adver

advertisement, falls to the King, or others having his grant.

With respect to moveable goods, such as household furniture, or other workmanship, he who makes them of materials of his own becomes proprietor, or even he who makes them of materials common to all, for the reason of occupancy of the materials, besides superadding his own labour and ingenuity in forming them. If a man should make a piece of workmanship of materials belonging to another, it is held that, in general, the right to the materials draws the workmanship after it as an accessory; yet this rule has admitted of some exceptions, as paintings drawn on another man's board or canvas, in consideration of the excellency of the art, and writing on another
man's

man's paper or parchment for the same reason, and because, in these cases, the workmanship greatly exceeds the materials.

In moveables which practice has considered as liable to pass from hand to hand by private bargain, as a small parcel of cattle, or a piece of workmanship, the natural possession with the opinion of property therein, is sufficient without any written title. Household furniture, sheep, and other cattle, and instruments of husbandry, are sometimes included in a disposition, which is not complete without possession. An instrument of possession is frequently taken thereon in the hands of a notary-public; but the conveyance is not effectual if the natural possession is retained by the disponent, and cannot
hurt

hurt his creditors ; but, in a question with them, is deemed collusive, and granted in trust for the disponent himself. The general practice, with respect to the sale of stocking, being, as before observed, that it is gathered together, sold, and delivered, before a number of people present thereat, and indeed necessary for the gathering and assortment thereof, and the entering to the natural possession, and granting security for the price, completes the right or conveyance. It will therefore occur, that a disposition of stocking can seldom happen. The purchase at a public sale or roup, of articles of household furniture followed by the natural possession, is also sufficient. In the sale by private bargain of a person's whole household furniture, writing is generally used for the conveyance, as this is a case which
more

more seldom happens, stocking being generally bought by the incoming from the outgoing tenant ; but furniture commonly transported from one house to another. Draught horses and instruments of husbandry are also often disposed along with household furniture.

Disposition of Moveables.

Know all men by these presents, *That* I A. B. ——— in C. for a certain sum of money instantly advanced and paid to me by C. D. ——— in E. *have sold, disposed, and made over, and do hereby sell, dispo**ne, convey* and make over to and in favour of the said C. D. his heirs, executors, or assignees, *all and whole* my household-plenishing, brass, copper, pewter, iron and timber-work, and generally
my

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my whole other furniture and plenishing of whatsoever kind, nature, or denomination the same be, pertaining or belonging to me, and in my custody and possession, within my dwelling-house of ——— and whole horses and instruments of husbandry of whatever kind or denomination the said instruments of husbandry may be, upon my possession of ——— pertaining to me, (a) all specified and contained in a particular inventory of the said plenishing and household furniture, horses, and instruments of husbandry, subscribed by me of the date hereof, as relative hereto, and which inventory is declared to make a part hereof, with all right or interest I have, or can pretend thereto: Surrogating and substituting the said C. D. in my full right and place of the premises, with power to him to enter

ter to the possession thereof, sell, use, and dispose thereupon, and generally every other thing thereanent to do that I could have done before granting hereof: Which disposition I bind and oblige me to warrant from my own facts and deeds alienably, done, or to be done, in prejudice hereof: *And I consent* to the registration hereof in the books of council and session, or others competent, therein to remain for preservation, and if needful, that all execution necessary, in form as effects, pass hereon; and thereto constitute

my
procurators, &c. In witness, &c.

(a) You may here insert the particulars of the plenishing, horses, and instruments of husbandry, and introduce them by saying, ‘and particularly without preju-

C

‘dice

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‘ dice of the generality foresaid,’ and then say, ‘ ——— tables, ——— chairs, &c. ——— ploughs, ——— carts, ——— harrows, with ‘ their whole furniture,’ &c. and so on to ‘ with all right or interest I have, or can ‘ pretend thereto. *Surrogating,*’ &c. and then go on as in the example given, to the end.

As to the docqueting of the inventory, and stamp-duty necessary therefor, *see Tit. of Contracts of Sale*, in the other volume.

If an instrument of possession is to be taken thereon by a notary-public, unless possession can be given by the disponent *propriis manibus*, it is necessary, before, *In witness*, &c. to insert the following precept of possession. ‘ And to the effect
‘ the

‘ the said C. D. may be put in the actual
‘ and corporeal possession of the said house-
‘ hold-plenishing, horses, and instruments
‘ of husbandry, above disposed, I by these
‘ presents make, constitute, and ordain
‘ you
‘ and each of you, conjunctly and seve-
‘ rally, my lawful procurators, to the ef-
‘ fect under-written, requiring you, upon
‘ sight hereof, to pass to my dwelling-
‘ house of ——— and possession of ———
‘ where the said household-plenishing,
‘ and others above disposed are, and there
‘ give and deliver to the said C. D. real,
‘ actual, and corporeal possession of all
‘ and whole the said household-plenish-
‘ ing, horses, and instruments of hus-
‘ bandry, above disposed, contained in
‘ the inventory above specified, and that,
‘ by delivering to the said C. D. or his
C 2 ‘ certain

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‘ certain attorney, in his name, bearer
‘ hereof, of some parcels or pieces of
‘ the said household furniture, and in-
‘ struments of husbandry, with one of
‘ the said horses by the ear, as symbols
‘ for and in name of the whole, as use is:
‘ And this in nowise ye leave undone.
‘ The which to do, I commit to you, and
‘ each of you, conjunctly and severally,
‘ my full power by these presents.’ In
witness, &c. Subscription clause. If
the particulars are mentioned in the dis-
position, leave out the words ‘ contained
‘ in the inventory above specified,’ in the
precept.

Bond and disposition of moveables goes
on, ‘ I A. B. in C. grant me to be justly
‘ resting owing to C. D. &c.’ (to clause
of registration in the bond, before which
it

it adds), ' And for the said C. D. his
' further security and more sure payment
' of the said principal sum, interest, and
' penalty, *I hereby sell, dispone,*' &c.—as
in the preceding—or insert any particular
moveables agreed on. Or such disposi-
tive clauses may be added to a bond of
relief, or of corroboration.

C 3

T I T.

T I T. III.

Assignations.

THE difference between a disposition and an assignation is, that a disposition is an original grant, conveyance, right, or security; an assignation is not so much a further conveyance of the thing mentioned in the original grant, &c. as a conveyance of the right thereto, or grant itself. That this is the case is evident from this consideration, that, though there may be an assignation of a disposition, the reverse can never happen.

A disposition, as before observed, is completed by possession; an assignation by intimation to the party who made the original grant, conveyance, right, or security, that it is transferred, by the person to whom it is granted, to a third party, the assignee.

This intimation, if regularly made, is by instrument taken by the assignee or his procurator in the hands of a notary; yet the law admits other notification as equivalent, where the notice given to the debtor of the assignment is equally strong. Thus a charge of horning, or process raised, at the assignee's instance against the debtor;—the debtor's promise of payment by letter,—payment of rents or interest are sufficient to supply the place of intimation. Possession is also equivalent
to

to intimation of an assignation to a tack,
or of moveable articles.

Delivery of the assignation to the assignee, or to a third person for his behoof, is also necessary; for (like most part of other writings) it is of no force while the granter keeps it in his possession: But registration of a deed is equivalent to delivery; and an extract is the same as the principal assignation for intimation, or any other purpose whatever.

Assignation of a Bill and Diligence.

Be it known to all men by these presents, that I, C. D. merchant in E. Whereas I by my bill, dated the ——— day of ——— drawn by me upon, and accepted by

by A. B. in C. ordered him — after date, to have paid to me or order the sum of — pounds Sterling, for value; which bill was duly protested for not payment, &c. and the protest registered in the sheriff-court books of — the — day of — (a). And now seeing that D. E— in F. hath made payment to me of the foresaid principal of — and interest thereof, extending, at the date hereof, to the sum of — (b) with the expence of protesting the said bill and registering the protest; whereof I grant receipt, renouncing all objections to the contrary; *therefore have made and constituted*, as I hereby make, constitute, and ordain the said D. E. his heirs and donors, my lawful cessioners and assignees, *not only in and to* the foresaid principal sum of — contained in, and due by the said bill,

bill, with the interest thereof since the same became due, and till payment, and expences of protesting and registering; *but also in and to* the foresaid bill and registrate protest (*c*) themselves, whole force and effect thereof, with all that has followed, or is competent to follow thereon; *surrogating and substituting* the said D. E. and his foresaids, in my full right and place of the premises, with power to him to intromit with, uplift, and receive the sums of money above assigned; and, if needful, (*d*) to call, charge, and pursue therefor, as accords of the law; and generally every other thing thereanent to do that I could have done myself at any time before granting hereof; which assignation I bind and oblige me to warrant from my own facts and deeds alienably, done, or to be done, in prejudice hereof.

hereof. And having herewith delivered up to the said D E. the foresaid bill and registrate protest, *I consent* to the registration hereof in the books of council and session, or others competent, therein to remain for preservation, and, if needful, that all execution necessary in form as effects, pass hereon, and thereto constitute

my procurators. In witness, &c.

(a) If registrate in the books of council and session, say, 'registrate in the books of council and session the — day of —,'

If horning and caption have been raised on the bill and protest, say, after letter (a), 'Whereupon I raised letters of horning, dated and signeted the — and

‘ and ——— days of ———, and year
 ‘ foresaid ; in virtue whereof the said A.
 ‘ B. was charged, and having failed to o-
 ‘ bey the charge, caption followed against
 ‘ him, which is dated and signeted the
 ‘ ——— day of ———,’ &c.

Sometimes inhibition is also raised and
 used, in which case add, ‘ And on which
 ‘ bill and protest I also raised letters of
 ‘ inhibition, which are dated and signeted
 ‘ the ——— day of ——— in the said year,
 ‘ and which were execute against him the
 ‘ said A. B. and the lieges, and with the
 ‘ executions thereof duly recorded in the
 ‘ register of inhibitions, &c. kept for the
 ‘ shire of ——— (or, in the general re-
 ‘ gister of inhibitions, &c. kept at Edin-
 ‘ burgh) the ——— day of ——— and
 ‘ year above written.’

At

At letter (b), instead of ‘ expence of
 ‘ protesting the said bill, and registering
 ‘ the protest,’ &c. say, ‘ and expences of
 ‘ diligence raised thereon, amounting to
 ‘ — but also in and to the said bill,
 ‘ registrate protest,’ and at letter (c), ‘ add,
 ‘ letters of horning, caption, inhibition,
 ‘ and executions thereof themselves, whole
 ‘ force,’ &c. ; and at letter (d) ‘ and if
 ‘ needful, to put the diligence already
 ‘ raised in execution against him, and to
 ‘ call, charge, and pursue therefor, as ac-
 ‘ cords of the law, either in my name or
 ‘ his own ; and generally every other
 ‘ thing,’ &c.

Assignation of a bond narrates the bond,
 and goes on as above, *mutatis mutandis*.

A bond may sometimes have an assign-
 nation in the end of it ; in which case,

go on as in a *bond and disposition*, till you come to the dispositive part, and then go on with the *assignation*. And in exemplification I have added the following form.

Bond and Assignation of an Annuity.

I, E. G. *alias* H. sister-german of the deceased I. G. merchant in ——— and spouse of W. K. at J. grant me, by these presents, to be justly resting owing to C. D. merchant in E. the sum of ——— pounds Sterling, renouncing all objections or exceptions to the contrary ; which sum of ——— I hereby bind and oblige me, my heirs, executors, and successors whatsoever, thankfully to content and pay to the said C. D. his heirs or assignees, betwixt

twixt the date hereof and the term of Martinmas next to come, with one fifth part more of the said principal sum of penalty and liquidate expences in case of failzie; together also with the due and ordinary annualrent of the said principal sum from and since the — day of — last, till the said term of payment, and yearly, termly, and proportionally thereafter, during the not payment thereof: And for the said C. D. his further security and more sure payment of the said principal sum, I hereby make and constitute him the said C. D. my undoubted and irrevocable cessioners and assignees, *not only in and to* a liferent annuity of — pounds Sterling, provided to me by the settlement of the said deceased I. G. my brother, in favour of — his widow, and others his disponees, dated

D d

the

the — day of — payable to me, exclusive of my husband's *jus mariti*, and that for all years and terms bygone resting unpaid, and also for all years and terms to come during my life; at least, in and to as much thereof as will completely satisfy and pay the said C. D. and his forefairs, the forefairs principal sum, annualrent, and penalty before mentioned, if incurred, *but also in and to* the said settlement itself, so far as I have right thereby, whole clauses and obligations therein contained in my favours, and all action and execution competent thereon; *surrogating and substituting* the said C. D. and his forefairs, in my full right, title, and place of the premises; with power to him to do every thing thereanent that I could have done before granting hereof: Which assignation I bind and oblige
— me

me to warrant from my own fact and deed done or to be done in prejudice hereof. Registration.

It is imagined there should, before the registration clause, be a clause of delivery of any writings, such as an extract of the settlement, which the person granting the assignation has to show for the life-rent annuity, for making this right effectual, or a power to recover and receive them; to be used till the assignee should recover payment.

A *discharge* likewise sometimes contains an *assignation*. See *Discharges*.

Assignment in trust for leading an Adjudication.

When more creditors than one intend to adjudge a person's estate, they frequently, to save expences, assign their grounds of debt, in trust, to one of their own number, that he may lead one adjudication for the whole : This may be done either by a simple assignation of the ground of debt and diligence, and a back-bond expressing the purpose of conveying and the trust, and obliging to denude when required ; or the assignation may mention the purpose for which it is granted, and the trust, &c. itself. The form of such assignation is as follows :

Be

Be it known to all men by these presents, *That I, A. B. of C. Whereas* (here narrate the bond, bill, or other ground of debt and diligence ;) *and seeing* the said principal sum of — Sterling, (and if a bond) — of liquidate penalty and annualrents of the said principal sum of — since the — day of — are all justly resting owing, *and that* it will be necessary to use diligence on the above ground of debt against the said C. D. (the debtor) *and that* G. H. in I. as creditor likewise to the said C. D. intends to use diligence against him the said C. D. upon the ground of debt due to him ; and that, for preventing unnecessary charges, the said G. H. is content to accept of the assignation under-written, in trust, to the effect the like diligence may be used by him in the above ground of debt

due

due to me as aforesaid : *Therefore wit ye me to have made, constituted, and ordained, as I hereby make, constitute, and ordain the said G. H. my lawful and undoubted cessioner and assignee, not only in and to the said sum of ——— Sterling, ——— of liquidate penalty, and annual rent of the said principal sum resting since the term of ——— contained in the said bond ; but also in and to the said bond itself, and all that has followed or may follow thereon, to the end the said G. H. may carry on diligence by adjudication or otherwise, on the said ground of debt due to me as aforesaid ; declaring always that the said G. H. shall be bound and obliged, as by acceptance hereof he binds and obliges himself, his heirs, executors, and successors whatsoever, to retrocess me, my heirs and assignees, in the full*
right

right of the said debt due to me, and to convey the decret of adjudication, and other diligence to follow thereon, to me and my foresaids, in so far allenary as concerns or may be extended to the above debt ; and that, whenever they shall be required by me and my foresaids, upon payment of a proportional part of the expences of obtaining the said decret of adjudication, and other diligence to follow thereon, effeiring to the said sums due to me, in manner above mentioned.

And I consent to the registration, &c. (for preservation and execution, and subscription clause.)

Trans-

Translation.

When the person to whom an assignation is granted, conveys the right assigned to him, with his assignation thereto, to another person, this conveyance is termed a Translation. The form of one follows :

Be it known to all men by these presents, *That* I, D. E. in F. *Whereas* A. B. — in C. by his bond dated — bound and obliged him, his heirs, executors, and successors, to have paid to C. D. in E. his heirs, executors, or assignees, the sum of — pounds Sterling of principal, against the term of — then next,
with

with the sum of — of liquidate penalty in case of failzie; together also with the due and ordinary annualrent of the said principal sum from the term of — then last, to the said term of payment, and yearly, termly, and proportionally thereafter, during the not payment, as the said bond in itself more fully bears; in and to which bond and sums of money therein contained, I have right from the said C. D. by assignation in my favours, dated the — of — last, as the said assignation bears. *And now seeing* G. H. in I. has made payment to me of a certain sum of money equivalent to the sums after mentioned, whereof I grant the receipt, renouncing all objections to the contrary. Therefore, wit ye me to have *assigned, transferred, and made over, as I by these presents assign, transfer, and*
make

make over to, and in favour of the said G. H. his heirs, executors, or assignees, not only the foresaid principal sum of ——— contained in the bond above narrated, and annualrent thereof resting unpaid, since the same fell due, and in time coming, during the not payment of the same, with the penalty in the said bond ; but also in and to the said bond and assignation foresaid, themselves, whole force, strength, and effect thereof, with all that has followed or may follow thereon : Turning and transferring the premisses from me and my foresaids to and in favours of the said G. H. and his above written, whom I hereby surrogate and substitute in my full right and place of the premisses, with full power to him and his foresaids to intromit with, uplift, and recover the sums of money hereby conveyed,

veyed, discharge or transfer the same ;
and generally every other thing therea-
nent to do that I could have done before
granting hereof : Which translation above
written I bind and oblige me and my
foresaids to warrant from my own facts
and deeds done or to be done by me
prejudicial hereto ; and I have herewith
delivered up to the said G. H. the bond
above narrated, and assignation thereto
in my favour, to be kept and used by
him and his foresaids at pleasure. And
consent to the registration, &c. (for pre-
servation and execution.)

This, as well as an assignation, must
be delivered and intimated to the origi-
nal granter of the right or bond.

E

A

A further conveyance by the person to whom a translation is granted, if such case ever happens, will differ in nothing except narrating the translation ; and as the title or backing is none of the essentials, it may bear any title, as conveyance, &c.

Retrocession.

When the person to whom an assignation is granted, denudes himself in favour of the person who granted it to him, this writing is termed a *Retrocession*. The form of one follows :

Be it known to all men by these presents, me D. E. in F. (narrate the bond or other original right) *and whereas* the said
C.

C. D. by assignation subscribed by him, of date — for the causes therein specified, *made* and *constituted* me, my heirs and donators, his lawful cessioners and assignees, *not only in* and *to* the said sum of — of principal, with annual rent and penalty, *but also in* and *to* the said bond itself, whole clauses and obligations therein contained, with all diligence and execution competent to follow thereon; as the said assignation, of the date fore-said, in itself more fully purports. *And* seeing the said assignation was granted by the said C. D. to me only in trust for his behoof, upon my promising to denude myself thereof in his favour, in manner under-written: *Therefore to have reposed* and *retroceded*, as I by these presents *re-pone* and *retrocede* the said C. D. his heirs and assignees, in his own right and place

of the said principal sum of — Ster-
ling, with annualrent and penalty due to
him by the said bond, and of the said
bond itself, and whole clauses and oblige-
ments therein contained, with all that has
followed or is competent to follow here-
upon: *Surrogating* and *substituting* the
said C. D. and his forefaids, in my full
right and place of the premisses, with
full power to him and his forefaids to in-
tromit with, uplift, and receive the said
sums, and if needful, to call, charge, and
pursue therefor, according to law, and
upon payment in whole or in part, re-
ceipts and discharges to grant, which shall
be sufficient to the receivers, and gene-
rally to do every other thing concerning
the premisses, which he could have done
before granting the said assignation, or I
could have done by virtue thereof before
granting

granting this retrocession, which I oblige me, my heirs and successors, to warrant from my own facts and deeds, done or to be done, in prejudice hereof: And having herewith delivered up to the said C. D. the foresaid assignation and bond to be kept and used by him as his own proper evidents in time coming, I consent to the registration, &c. (for preservation and execution.)

OBSERVATIONS.

1. This right ought also to be intimated: But a simple retrocession, without intimation, is sufficient to denude one of an unintimated assignation or translation.

E 3

2. There

2. There may also be a translation, or a retrocession of an assignation to a tack, by a tenant; or, to a tack-duty by an heritor; or, of any other right or security assigned.

3. The causes of granting, and narratives of retrocessions, may be different according to the nature of the rights retroceded. In case of a bond and assignation, or other right granted in security, a retrocession may follow a discharge of the debt, for security of the payment of which such right was granted; or, may proceed on a narrative, that the creditor has received security for the debt with which he is satisfied; and therefore denudes himself of the assignation or translation in security, and retrocedes the granter of the assignation or translation in his own right

right thereof: But, from the examples given, from which the general nature of such writings may be gathered, they may easily be made out according to the circumstances of particular cases.

Dispositions and Assignations.

From what has been before observed as to the nature of dispositions and assignations, and the difference betwixt them, it will occur that the two following forms of writings partake of the nature of both, and should properly be termed *Dispositions and Assignations*.

Disposition

*Disposition omnium bonorum by a
Person offering to suspend on jura-
tory caution.*

Where a suspender cannot, from low or suspected circumstances, procure unquestionable caution, the Lords of Session admit of *juratory* caution, (*i. e.* such as the suspender swears is the best he can offer.) In this case, it is required by act of sederunt 1682, that the person who intends thus to apply, shall intimate, by a notary, the day whereon he is to present the bill, and which must be within six days after the intimation. When the bill is past, which is done by the whole court:

court in time of session, or by three Lords in time of vacance; the suspender must also give in a disposition of all his estate, real and personal, upon oath, to the creditor charger, in case he shall be found liable in the debt, at discussing the suspension. The form of such disposition may be as follows :

Know all men, by these presents, me A. B. in C. *Whereas* I was lately charged to make payment to C. D. in E. of the sum of ——— said to be contained in a (a) decret obtained at his instance against me before ——— upon the —— day of ——— and in letters of horning following thereon, which are dated and signetted the —— day of ——— of which charge I have presented a bill of suspension to the Lords of Council and Session, which

which they have passed on juratory caution. *Therefore* I the said A. B. in terms of the act of federunt thereanent, and in supplement of the said caution, *dispose, assign, and transfer* to the said C. B. his heirs or assignees, all and sundry lands, heritages, debts, and sums of money, whether heritable or moveable, pertaining and belonging, or owing and addebted to me by any person or persons, with the vouchers and instructions of the said debts; dispensing with the generality hereof, and admitting and declaring the same to be equally valid and sufficient, as if every particular sum and subject hereby conveyed were herein insert; and that for the said C. D. his security and payment of the said debt and sums above mentioned, in case it shall be found that I am liable in payment thereof, after discussing

cussing the said suspension, with full power in that event to do every thing thereanent which I could have done before granting hereof. Which disposition I bind and oblige me to warrant from my own fact and deed to be done in prejudice hereof; consenting to the registration hereof in the books of council and session, or others competent, therein to remain for preservation, and if needful, that all execution, &c.

(a) If a bill, instead of a decret, say,
' in a bill dated ——— drawn by the
' said C. D. upon, and accepted by me,
' payable ——— and which bill is pro-
' tested, and the protest recorded in ———;
and in letters of horning, &c.

Trust

*Trust-disposition and Assignment by a
Debtor to certain Persons for be-
hoof of his Creditors.*

When a debtor finds his affairs so much involved that he cannot extricate himself, he commonly calls a meeting of his creditors to consider upon proper steps to be taken, with regard to his effects, for their payment, and offers a fair surrender thereof to such persons, and in such manner, as they may appoint. The consequence frequently is, a resolution in a minute of the creditors present thereat, that the debtor shall dispoise his effects to trustees for behoof of his creditors. This disposition, however, is not effectual to prevent

prevent any creditor who does not accede or agree thereto from taking separate legal measures. In trust-dispositions of heritage, where the subjects are considerable, a formal deed of accession is made out. But, in moveables, the accession may be inferred from the minutes of the creditors, or any other writing approving of, and concurring in the proceedings to be had in consequence thereof, or from giving in the grounds of debt to the trustees or their factor, for the purpose of drawing the proportion of the funds.

Be it known to all men by these presents, me A. B. — in C. Forasmuch as I am justly owing and addebted to the several persons after-named, the particular sums of money under-written, viz. to J. M'C. of G. per bill — pounds —
F
shillings,

shillings, to W. M^cK. in B. *per* bill —
pounds, to A. M^cK. in G. *per* bill —
pounds, to J. K. in W. of C. *per* bill
— pounds, to J. M^cK. in C. *per* bill
— pounds ; to J. M^cC. in G. *per* bill,
— pounds — shillings ; to W. M^cC.
in M. *per* bill, — pounds ; to J. B.
there, *per* bill, — pounds ; to the chil-
dren of the deceased A. C. in B. *per* bill,
— pounds ; to R. K. merchant in K.
per bill, — pounds — shillings ; to
C. K. merchant in D. *per* bill, —
pounds ; to D. B. and Co. merchants in
A. *per* bill, — pounds — shillings
and — pence ; to E. C. merchant there,
per bill, — pounds — shillings ; to
J. W. Elder merchant in K. *per* bill,
— pounds — shillings ; and to W.
S. merchant there — pounds, all Ster-
ling money. For the further security
and

and more sure payment of the debts due to my creditors above mentioned, or any others my just and lawful creditors that may possibly be here omitted, whom the trustees after-named shall assume into the benefit of this right and disposition, in virtue of the powers after expressed, and for preventing the charges and expences they may be put to in doing legal diligence against me for the same, and in compliance with the desire of a meeting of my said creditors, and for several other weighty causes and considerations moving me, *Therefore wit ye me the said A. B. to have sold, alienated, dispo-
ned, and assigned, as I by these presents, with
and under the provisions and conditions
after mentioned, sell, alienate, dispo-
ne, and assign from me, my heirs, executors,
and successors, to and in favours of the*

said

for themselves, so far as they are creditors, and as trustees for and to the use and behoof of my other creditors above mentioned, and any others my just and lawful creditors who may possibly be here omitted, whom the said trustees shall assume into the benefit of this right and disposition, in virtue of the powers with which they are vested, as after expressed, *all and whole* my goods, gear, insight and household plenishing, corns, cattle, horses, nolt, sheep, debts, and sums of money, due and addebted to me by whatever person or persons, whether by bond, bill, accompt, decreet, promissory note, contract, obligation, or any other manner of way whatsoever, and every other thing pertaining and belonging to me, and particularly without prejudice

judice of the generality foresaid, the sum
of ——— Sterling money of principal,
——— money foresaid of penalty, and
annualrent of the said principal sum by-
gone resting unpaid, and in time coming
during the not payment, contained in a
bond granted by I. K. of L. to the de-
ceased J. B. my father, of date the twen-
ty-third day of March one thousand se-
ven hundred and seventy ——— years, with
the said bond itself, and all that has fol-
lowed, or may follow thereupon, for e-
ver. As also, the whole other debts rest-
ing owing and addebted to me by bills,
accompts, and otherwise, contained in,
and conform to a particular inventory
made out and subscribed by me of this
date, relative to this right and disposition,
which I hold as a part hereof, *brevitatis*
causa. Surrogating and substituting the
F 3. said

said trustees in my full room, right, and place of the premisses, with full power to them, or their quorum after named, to intromit therewith, dispose thereupon, for the ends after-mentioned; to call, charge, and pursue therefor; and in my name to confirm the foresaid bond granted by the said J. K. to my said deceased father, as accords of law; decreets in the premisses to recover; compone, transact, and agree thereanent; discharges to grant; and, generally, every other thing requisite anent the premisses to do which I could have done myself before granting hereof. *Declaring*, that any three of the said persons, trustees before named, shall be a quorum, invested with the full power of executing the trust hereby committed to them; and for doing all things requisite thereanent. *And moreover*, with power

to

to the said trustees, or quorum of them
aforesaid, to nominate and appoint a fac-
tor for calling in and ingathering the fore-
said debts due to me, particularly and ge-
nerally above mentioned, and for selling
and disposing of the other goods and gear
before disposed, and to state and fit ac-
compts with their said factor, and to ap-
ply the sums arising therefrom, after de-
duction of all necessary charges and ex-
pences to be debursed by them or their
factor, by their order, in the execution
of the trust committed to them, and of
what reasonable gratification they shall
think fit to give their said factor, or o-
thers who shall be employed in reference
to the premises, for payment of the just,
true, and lawful debts before mentioned,
proportionally to my creditors; decla-
ring the said trustees, or their successors
in

in office, to be nominate by a majority of my creditors, in the event of their death, or refusing to act, shall be no further liable than each for his own actual intromissions, and nowise for omissions. *Providing* likewise, that the mention made of the sums due by me to the persons named in this disposition, as in the narrative thereof, nor in the narrative of the assumption to be made of such as shall be assumed by the said trustees, shall not import that they are truly due, unless that they are sufficiently instructed. And it is also hereby provided, that the said trustees are, by their acceptation hereof, bound and obliged to *assume* into the benefit hereof, such person, or persons, as shall appear to be true and lawful creditors to me, at the date hereof, in any debts other than those specially enumerated.

rated herein, and who shall produce their grounds of debt, before the scheme of division is made out, (proper advertisement being made in the Edinburgh news papers to the said creditors to produce their grounds of debt) so as such a proportional part of the subjects hereby disposed, or prices thereof, as ought rightly to fall to them may be communicated to them in the same manner as if they had been originally named herein. Which disposition and assignation before written, I bind and oblige me and my foresaids to warrant to be good, valid, and sufficient to the said trustees, for behoof foresaid, with and under the provisions and conditions before expressed, at all hands, and against all deadly, as law will; and I have instantly entered the said trustees to the
real

real and peaceable possession of the subjects hereby disposed, for the ends and purposes before rehearsed. (Registration for preservation, and execution, if needful.)

Bond, and Assignment in consequence thereof.

It sometimes happens that different writings are granted in consideration of each other, as the bond and assignment are in the following case.

Bond

Bond for rent to the Landlord having right of hypothec, by a person intending to poind the tenant's effects, and Assignment by the landlord in consequence thereof.

The landlord can, in virtue of his right of hypothec, retain the corn and other effects upon the ground, for his rent, though a creditor of the tenant should have legal diligence ready to be executed against them by poinding. If the poinding is attempted before the term of payment of the rent, the landlord may stop it, unless sufficient security be offered to him for the year's rent, and that even although effects should be left sufficient for
the

the rent, as these may be destroyed or carried off before the term : But, after the term of payment, he cannot stop the creditor from poinding, if sufficiency is left, for the year's rent, (*i. e.* the year's rent whereof the corns are the crop ; and the cattle for the year bygone, if within three months after the last conventional term). Thus, where the tack is current, it is sufficient to leave effects equal to the bygone rent, subject to the hypothec ; but he must find caution for the current rent. But, although the creditor, on finding such security, may no doubt poind for the debt due to himself ; yet it will occur that he cannot poind for the rent for which he has thus found security, without being liable to a process of spuilzie, as this would be going beyond his warrant. The creditor must therefore
take

take an assignation to the tack, in so far as respects the term's rent, and raise diligence thereon; and when the rent becomes due, charge the tenant, and poind therefor; or, the assignation to the rent may include an assignation to the landlord's right of hypothec; (for the right of hypothec is competent to the assignee of the landlord); and the creditor may thereupon apply for a special warrant of hypothecation and sequestration, and for warrant of sale in consequence thereof.

The security granted to the landlord may be a bond proceeding upon a narrative of the transaction; thus,

*Know all men by these presents, me C.
D. in E. Whereas I, by my bill dated
—— drawn by me upon, and accepted
G by*

by D. E. in F. tackfman of the lands of
_____ ordered him, _____ after date,
to have paid to me or order, the sum of
_____ for value ; which bill was, at my
instance, duly protested, and the protest
registered ; and I having, in virtue of the
registered protest, caused charge the said
D. E. to make payment, and the days of
the charge having elapsed, was proceed-
ing to point the effects belonging to him
upon the said lands of _____ but was pre-
vented therein by A. B. of C. proprietor
of the said lands, upon his right of reten-
tion and hypothec thereon for the current
year's rent ; and the said A. B. having
agreed to allow me to proceed in the said
pointing, on my granting security to
him for payment of the said current
year's rent, in manner under-written,
therefore, I the said C. D. as principal, and
G.

G. H. in J. as cautioner, surety, and full debtor for and with me, bind and oblige us, conjunctly and severally, our heirs, executors, and successors, to make payment to the said A. B. proprietor foresaid, of the sum of — being the current year's rent for the said possession from Whitsunday last to Whitsunday next, and that at and against the terms of Martinmas and Whitsunday next, by equal portions, being the time when the same becomes due, and for which the said A. B. has by law a right of hypothec on the corns, cattle, and effects of the said tackfman, in manner foresaid; with a fifth part more of each term's rent of penalty in case of failzie. Registration, &c.

It is imagined even conjunct bills pay-

able at the same terms with the rent, would be sufficient where it is payable in money: If payable in victual, take in the rent and terms of payment from the tack.

Assignment in consequence thereof.

Be it kuown to all men, by these presents, that I, A. B. of C. proprietor of the lands of F. after mentioned. *Whereas* C. D. in E. as creditor to D. E. in F. tackfman of the said lands of F. having, with an intention of poinding the effects of the said D. E. and in consideration of my granting the assignation under-written, found security to me for the current year's rent due for the said lands, wherewith I am satisfied, renouncing all objections to the contrary; therefore have
made,

made, constituted, and ordained, as I hereby make, constitute, and ordain the said C. D. his heirs and successors, my lawful cessioners and assignees, *not only* in and to the sum of — of tack-duty, contained in the tack of the said lands, dated the — day of — 177— entered into between the said D. E. and me, for the current year, payable at the terms of Martinmas and Whitsunday next, by equal portions, with one fifth part more of penalty, conditioned for each term's failzie, in case the same be incurred; *but also*, in and to the said tack itself, whole clauses and obligations therein contained, with all that is competent to follow thereon, so far as the same concerns, or may be extended to the said year's rent; and in like manner, in and to all right of retention and hypothec competent to

me for the said year's rent. *Surrogating* and *substituting* the said C. D. and his forefaids, in my full right, title, and place of the premisses, with power to him and them to call, charge, and pursue for the said tack-duty, warrants of hypothecation and sequestration to procure, and on non-payment, warrants of sale of the goods hypothecated and sequestrated, to apply for and obtain, for payment of the said year's rent; and upon recovery and payment, receipts and discharges to grant, which shall be sufficient to the receivers; and generally every other thing thereanent to do that I could have done before granting hereof. Which assignment, I bind and oblige me to warrant from my own proper fact or deed, done or to be done, in prejudice hereof. And I bind and oblige me to make the said tack, or an extract

tract thereof, forthcoming to the said C. D. for the purposes foresaid, upon his receipt and obligation for redelivery, when the foresaid purpose is accomplished. Registration, &c.

OBSERVATION.

IT will be observed, that there has hitherto been nothing said of assignments to heritable rights before infestment taken thereon, or of such heritable rights as do not require infestment, nor any example of these writings given. These, it was thought, would more properly fall to make a part of a complete treatise on heritable rights, after the nature of such rights,

80 *Bond, and Assignment, &c.*

rights, and the original constitution of them, had been discussed; and they are therefore reserved to make a part of such treatise.

T I T.

T I T. IV.

*Discharges.**Discharge of a Bill and Diligence.*

HAVING elsewhere treated at considerable length of discharges, it only remains here to take notice of discharges of grounds of debt on which diligence has been raised. I shall begin with a discharge of a bill and diligence, which may be thus :

*Know all men by these presents, me C.
D. in E. Whereas (narrate the bill and
dili-*

diligence raised thereon, as in the examples of assignations, and then go on) and now seeing the said A. B. has instantly made payment to me of the foresaid principal sum of ——— pounds Sterling contained in the said bill, with interest thereof since the ——— day of ——— when the same fell due, to this date, with the sum of ——— being the expences of diligence raised thereon, amounting in whole to the sum of ——— pounds Sterling, whereof I grant receipt; *Therefore* I have exonerated and discharged, and by these presents exoner, quit-claim, and *simpliciter* discharge the said A. B. his heirs, executors, and successors, *not only* of the foresaid principal sum of ——— Sterling, contained in and due by the said bill, interest thereof, and expences of diligence raised thereon, *but also* of the
said

saïd bill, registrate protest, letters of horn-
ing and caption themselves, with all that
has followed, or is competent to follow
thereon, for ever (*a*). Which discharge
I bind and oblige me, my heirs and suc-
cessors, to warrant at all hands, and a-
gainst all deadly : And having herewith
delivered to the saïd A. B. the saïd bill,
registrate protest, letters of horning and
caption, to be kept and used by him and
his foresaïds at pleasure, *I consent* to the
registration, &c. (for preservation and ex-
ecution, if needful.) Then follows clause
of subscription.

If a discharge of a bond and diligence,
narrate the bond, and go on, ‘ And now
‘ seeing, &c. with interest thereof since
‘ the term of ——— all former interest ha-
‘ ving been paid,’ &c. *Therefore, &c.*

‘ not

not only of the foresaid principal sum, with interest and penalty, *but also* of the said bond, letters of horning, &c. and having herewith delivered up the said bond, letters of horning, &c.

(a) If there has been inhibition raised, narrate it, and say, at letter (a) in the discharge part : ‘ And further, I hereby
‘ *renounce* and *discharge* the said inhibition raised and executed at my instance
‘ against the said A. B. and declare the
‘ same, with all that has followed, or may
‘ follow thereon, to be void, and of no
‘ force or effect, and his lands and others
‘ to be freed and disincumbered thereof
‘ in all time coming, in the same manner,
‘ and as freely in every respect as if the
‘ said inhibition had never been raised
‘ and executed.’

If

If there have been arrestments used, after narrating the registration of the protest or the horning, upon which the arrestments were used, say, 'In virtue
' whereof, I caused ——— officer (or
' messenger, if on a horning) pass upon
' the ——— of ——— and lawfully fence,'
&c. (narrate the execution of arrestment)
and in the discharge, after letter (a), and
' in like manner, I hereby *renounce* and
' *discharge* the said arrestments used at
' my instance, in the hands of the said
' ——— and declare the same to be loo-
' sed, and the said A. B. at liberty to re-
' ceive the debts and effects arrested from
' the said ——— as freely in all respects
' as if the said arrestments had never
' been used.'

H

Discharge

Discharge and Assignment to a Cautioner.

Where a person makes payment of a debt for which he was cautioner, the creditor, along with the discharge, generally gives him an assignment, that he may the more readily operate his relief against the principal; the form of which discharge and assignment is as follows:

Be it known to all men by these presents, that I, D. E. in F. *Whereas* A. B. — in C. and C. B. in A. by their bond dated the — day of — 17— years, bound and obliged themselves, jointly and severally, their heirs, executors, and

and successors whomsoever, thankfully to content and pay to me, my heirs, executors, or assignees, the sum of ——— pounds Sterling, and that against the term of Martinmas then first, 17— years, with ——— money foresaid, of liquidate expenses in case of failzie, together also with the due and ordinary annualrent of the said principal sum from the date of the said bond till payment of the same, as the said bond, registrate in the books of council and session upon the ——— day of ——— last, more fully bears. *And whereas* the said A. B. by missive letter to the said C. B. dated the ——— day of ——— acknowledged that he the said C. B. was only cautioner for him the said A. B. in the foresaid bond, the said sum having been wholly applied to the said

A. B.'s use and behoof, and obliged himself to free, relieve, harmless and skaithless keep the said C. B. thereof, and of all cost, skaith, damages, or expences, he might sustain therethrough, as the said missive also bears. *And* now seeing the said C. B. has made payment to me of the foresaid sum of — Sterling, and whole annualrent thereof since the — day of — the former annualrents having been paid up and discharged, together with the sum of — of expence laid out in raising and executing diligence thereon, amounting in whole, at the date hereof, to the sum of — whereof I grant receipt. *Therefore, wit ye me, not only to have exonerated and discharged, as I hereby exoner, quit claim, and simpliciter discharge the said C. B. of the said principal*

cipal sum, annualrents thereof resting unpaid, contained in the said bond, and expences laid out by me in doing diligence on the said bond, and of the said bond itself, with all that has followed or may follow thereon, against him; *but also*, in order that he may operate his relief against the said A. B. *to have made, constituted, and ordained, as I by these presents make, constitute, and ordain the said C. B. his heirs and donators, my lawful cessioners and assignees, in and to the foresaid principal sum of ——— annualrent thereof since the said ——— day of ——— years, and in time coming, till payment, with the foresaid sum of ——— Sterling of penalty incurred through failzie, all contained in the foresaid bond, and expences debursed by me in raising and executing diligence thereon, and in*

and to the foresaid bond itself, letters of horning raised thereon, executions thereof, and all that has followed, or is competent to follow on the same. *Surrogating* and *substituting* the said C. B. in my full right and place of the premisses, with full power to him to do every thing thereanent I could have done myself before granting hereof, and that either in my name or his own as he may think proper; which discharge and assignation I bind and oblige me, my heirs, executors, and successors, to warrant to the said C. B. and his foresaids, as follows, viz. the said discharge at all hands, and against all deadly, as law will; and the said assignation from my own fact and deed only done or to be done in prejudice hereof: And having herewith delivered

vered up to the said C. B. the extract of the said bond, and whole diligence following thereon, to be kept and used by him and his foresaids at pleasure, I consent to the registration, (for preservation and execution. Testing clause.)

T I T,

T I T. V.

Factories.

FACTORY, in Scotland, is a mandate by one person to another, to manage his affairs. It is considered in law as a contract; as not only the appointment of the constituent, but also the factor's acceptance, is necessary to its completion; which last is sufficiently vouched by holding the factory, and acting under it. As it proceeds from a *dilectus personae*, it expires by the death of either

either of the parties. If matters are entire, or ripe for a dissolution of the contract, it may be put an end to at any time by either of the parties; by renunciation of the factor, or revocation of the factory by the employer; and although this revocation should be only a tacit one, appearing by the nomination of another person, unless otherwise provided.

A factory may be either general, for managing one's whole affairs, or only for transacting a particular piece of business. No action lies against the factor, acting *factorio nomine*; for he only binds his constituent. This will not serve him, however, as a defence for committing a crime, as no mandate, however ample or general, can be construed into an order to commit

mit a crime, or can justify the commission of it.

Neither does a general mandate authorise the factor to dispose gratuitously of his constituent's property, nor to sell his heritage, even for an adequate price; but it will authorise the sale of such moveables as are about to perish: Neither does it entitle the factor to transact or submit doubtful claims, however proper this step might be, without a special power.

General

*General Factory and Commission to a
Factor for uplifting rents and sums
of money, with power to receive re-
signations and enter vassals, and
containing nomination as Baron
Bailie.*

*Be it known to all men by these pre-
sents, that I, A. B. Esq; of C. Whereas,
on account of my intended absence from
this kingdom, I cannot conveniently at-
tend to the management of my affairs af-
ter-mentioned; and having full confidence
in the fidelity and abilities of C. D. —
in E. do therefore hereby make, nomi-
nate, constitute, and appoint the said C. D.
my factor and commissioner, to the effect
under-written, giving, granting, and com-
mitting*

mitting to him full power, warrant, and commission for me, and in my name, to ask, crave, uplift, and receive the rents, mails, farms, duties, kains, customs, casualties, and other profits whatsoever, of *all* and *whole* my lands, barony, and estate of — and others pertaining to me, from the feuers, vassals, tacksmen, and possessors thereof, of which I have delivered him a signed rental, and list of arrears of this date (*a*) ; and also, to intromit with, uplift, and receive all debts and sums of money, whether heritable or moveable, due and addebted to me by whatsoever person or persons, and if need be, to call, charge, and pursue for the said rents, duties, debts, and sums of money, decree to recover thereupon, and the same to execution to cause be put; receipts, discharges, and
ac.

acquittances to grant, which shall be sufficient to the receivers, with full power to the said C. D. to use warnings, prosecute removings, output and input tenants, and set new tacks for a term of years not exceeding nineteen, and without diminution of the rental ; to call to account and settle with former factors and chamberlains for their intromissions ; to ask, crave, uplift, and receive non-entries and other casualties of superiority pertaining to me, fallen or that shall fall in my hands, as superior of the said lands ; to intent, follow forth, and pursue all actions and causes necessary ; and to defend in any actions or causes that may anywise concern me, or the said lands, baronies, or others foresaid, or the said debts and sums of money, if need be, (b) and with power to enter vassals, and receive com-

I

positions

positions thereupon; to receive resignations, and grant new infestments thereupon; and to bestow and employ the said rents, mails, duties, casualities, and others foresaid, upon my affairs; and if he shall judge it to be for my interest to borrow such sum or sums of money as he may think proper, on my account; and, for the purposes foresaid, to grant, subscribe, and deliver charters, precepts of *clare constat*, bonds, obligations, tacks, and other writs necessary, as factor and chamberlain foresaid; and generally all and sundry other things to do in my affairs which I could do if personally present, or which any factor might do in the like cases; promising to hold firm and stable whatever my said factor and commissioner lawfully does or causes to be done in the premisses, without revocation; providing

providing always, as it is hereby provided and declared, that the said C. D. shall be obliged to make compt, reckoning, and payment to me, my heirs and assignees, or others in my name, of his intromissions in virtue hereof, but with allowance always of all necessary expenses thereanent, and of the sums of — pounds of factor fee for his trouble. *And Moreover*, I hereby nominate, constitute, and appoint the said C. D. my baron-baillie, to the effect under-written, giving, granting, and committing to him full power, warrant, and commission for me, and in my name, to hold courts at any place upon the ground of the said lands, for recovery of the rents, mails, farms, profits, duties, and others foresaid, and to administer justice in all causes competent, with power to him to appoint clerks,

members of court, and officers, and to depose them at pleasure, and appoint others in their places ; and generally every other thing to do, which, to the office of baron-bailie in such cases is known to pertain ; all which I promise to hold firm and stable. And I ordain this factory and nomination of bailiary to remain during the space of ——— and thereafter until I recall the same by writing under my hand. And I consent to the registration, &c. for preservation.

(a) If the rent, &c. is partly paid in kind, say here, ‘ and to sell and dispose ‘ upon such of the rents, farms, and duties, and others, as are paid in victual, ‘ and upon the kains and casualities, such ‘ of them as he may see proper, at such ‘ prices

'prices as may be reasonable for the
'time.'

(b) The factor, as before observed, not being entitled to submit without special powers, it may be proper here to add the following clause: 'Compone, transact, and agree thereanent, and, if necessary, to enter into submissions of any doubtful claims to one or more arbiters, with power to them to name an oversman, if they shall see cause.'

Factory for uplifting the Rents of a particular estate.

I, A. B. Esq; of C. considering that I cannot conveniently attend personally to the management of my affairs after-men-

tioned, and having entire confidence in the fidelity and abilities of C. D. in E. do therefore hereby *make, constitute, and appoint* the said C. D. to be my factor, to the effect after specified, *giving, granting, and committing* to him full power, warrant, and commission to intromit with, uplift, and receive the rents, mails, farms, duties, kains, customs, and casualities of my lands and estate of ——— of which I have delivered to him a signed rental and list of arrears of this date: (a) With full power to the said C. D. to use warnings, prosecute removings, (here may be insert power ‘to output and input tenants, and set new tacks for a term not exceeding ——— and without diminution of the rental; and to sell and dispose upon the victual-rent at such price ‘as is reasonable for the time,’) and if
need

need be, to call and pursue for the said rents; (b) receipts, discharges, and all other writings necessary, on payment to grant, which shall be sufficient to the receiver; and generally, &c. *Providing, &c.*

A Factory for uplifting debts, &c. may be herein included, by inserting at letter (a), ‘and also, to uplift and receive all ‘debts and sums of money, whether heritable or moveable, owing and addebted to me by whatsoever person or persons;’ and at letter (b), ‘debts, and ‘sums of money;’ you may also add, ‘compone, transact, and agree,’ &c. and then go on with ‘receipts,’ &c.; or, a *Factory for uplifting debts and sums of money*, may be execute by itself in these terms.

Factory

*Factory for uplifting Debts and Sums
of Money.*

I, A. B. in C, *considering, &c. do there-*
fore hereby make, &c. giving, &c. to in-
tromit with, uplift, and receive all and
fundry debts and sums of money, herita-
ble and moveable, due and resting ow-
ing to me, or which shall become due
and addebted to me, by bonds, bills,
tickets, accompts, or any other manner
of way ; and to call, charge, and pursue
therefor, decreets to obtain, and the same
to all due execution to cause be put,
compone, transact, and agree thereanent,
(insert power to submit, if wanted) re-
ceipts, discharges, renunciations, grants
of

of redemption, dispositions, assignations, and all other rights, conveyances, or extinctions thereof, to make, grant, subscribe, and deliver, which shall be sufficient, &c. *and generally, &c. promising, &c. providing, &c.*

A factory to recover a particular debt, narrates the manner whereby the debt is due, and subsumes, ‘and seeing it is necessary for me to appoint a factor for uplifting the said, &c. *do therefore hereby nominate, &c. with power to him to uplift and receive the said, &c. and if needful, to call, charge, and pursue therefor, (if necessary, ‘compone,’ &c. and power to submit) receipts and discharges to grant, &c. and generally, &c. promise to hold firm and stable. Providing, &c. Registration,’ &c.*

Factory

Factory to sell lands may be either contained in a general factory, and introduced after the power to ‘bestow and ‘employ the rents, &c. upon my affairs;’ and for borrowing money, thus; ‘*as also*, to treat, commune, and agree with ‘any person or persons, about the sale of ‘my lands of ——— lying in the parish ‘of ——— and shire of ———; and to ‘agree and settle with the purchaser or ‘purchasers, what shall be the price there- ‘of, not being under the sum of ——— ‘and to enter into minutes of sale there- ‘of;’ and then it goes on, ‘*and for the ‘purposes foresaid, to grant, subscribe, ‘and deliver charters, precepts of clare ‘constat, dispositions, bonds, obligations, ‘tacks,*’ &c. Or, it may be granted by itself, and begin as in the example of a factory, for uplifting the rents of a particular

ricular estate, and go on with, giving, granting, and committing full power, warrant, and commission, and then say, 'to the said C. D. to treat, commune, &c. and to enter into minutes of sale thereof; and in implement thereof, to sign dispositions, assignments, and all other writs necessary,' (power to do what the constituent could do if personally present, or any other factor in the like cases, and obligation on the granter and his heirs to ratify, and registration.)

Commission to enter vassals, and receive resignations.

I, A. B. Esq; of C. *considering, &c.*
do therefore nominate, constitute, and
appoint C. D. in E. F. G. in H. and I.
K.

K. in L. or any two of them, jointly, my lawful commissioners to the effect underwritten, *giving, granting,* and committing to them, or any two of them jointly, as said is, my full power, warrant, and commission, for me, and in my name and behalf, until they shall be discharged by me, *to accept and receive* all resignations, to be made by my vassals in my estate, new investments thereon, to grant, subscribe, and deliver, as also confirmations, charters on adjudications or sales, and precepts of *clare constat*, which shall be equally sufficient to the receivers as if granted by myself; and generally all and sundry other things concerning the premises, to do, use, and exercise, that to the office of commissioner in such cases is known to pertain, or that I might do, if personally present, promising to hold firm and stable, what-

whatever my said commissioners shall lawfully do in the premisses : *Providing* always, that the said commissioners shall be accountable to me for the whole compositions they shall intromit with and receive from my said vassals.—Registration for preservation.

Sometimes a *commission to a baron-bailie* is made out by itself thus :

‘ I, A. B. Esq; of C. having full confidence in the fidelity and abilities of C. D. in E. *do* hereby make, nominate, constitute, and appoint the said C. D. baron-bailie of my barony of — with power to him to appoint clerks, officers, and other members of court, and to hold courts at any place within the said barony as oft as needful, for recovery of

K

‘ the

‘ the rents, maills, and duties, and others
‘ of my lands within the said barony;
‘ transgressions and breaches of the peace
‘ to punish according to law, fines, and
‘ amerciaments of court to uplift, and to
‘ administer justice in all causes compe-
‘ tent, and to uplift and intromit with the
‘ fines and casualties, profits, and duties
‘ belonging to the same, and apply the
‘ same to his own use; and generally all
‘ and fundry other things lawful and com-
‘ petent to do that to the office of baron-
‘ bailie is known to belong by the laws
‘ of Scotland, declaring that this present
‘ nomination shall subsist till revoked by
‘ writing under my hand: And I consent
‘ to the registration,’ &c.

By act 20th Geo. II. a baron’s civil ju-
risdiction is in effect reduced to the right
of

of recovering from his vassals and tenants, the feu-duties and rents of his lands, and compelling them to perform the services, to which they are bound to him, or to his miln ; which is a right that every proprietor of lands, though neither a baron nor infest *cum curiis*, was understood to have by our former law : For even in lands erected into a barony previous to that act, the baron, or his bailie, can judge in no other civil action where the debt and damage exceed 40 s. Sterling ; and proration can extend his jurisdiction beyond that sum. He hath no longer the cognizance as a criminal judge of any trial upon penal statutes ; for his criminal jurisdiction is expressly limited to assaults, batteries, and smaller offences, which may be punished either by a fine not exceeding 20 s. Sterling, or by setting the delinquent in

the stocks, in the day time, not exceeding three hours: The fine to be levied by pointing the delinquent's goods; for his power of imprisonment is clogged with so many conditions as amount nearly to a prohibition in this branch.—Since the 6th June 1747, no new grant, erection, or annexation, is sufficient to convey a greater jurisdiction than for recovery of rents, multures, and mill-services; and such grants, &c. are declared to be void.

The baron-bailie must qualify by taking the oaths to government, as any other person in an office of public trust.

T I T.

T. I. T. VI.

Powers of Attorney.

AN *attorney* is the same in England as a *factor* in Scotland: He is defined to be a person appointed by another man to do any thing in his absence; and his authority for so doing, is a power or letter of attorney. The persons commonly called *attornies* there, are *attornies at law*, a term synonymous to that of *writer* or *agent* in Scotland.

These *powers of attorney* are writings executed in the English form (which is also that used in the British dominions abroad;) as writings to be effectual must be perfected according to the solemnities of the country where they are to receive execution. Although personal obligations are here allowed, though extended after the form used in the place where they are signed, yet, with regard to other writings, this rule is strictly adhered to; and particularly conveyances of, or writings relating to heritage, must be executed according to the form, and with the solemnities used in the place where the heritage lies. Thus writings granted or entered into by foreigners, with regard to heritage in Scotland, or the management thereof, must be executed according to the forms and solemnities used in Scotland; and the same will

will hold as to any other country with respect to writings in general. Whether all personal obligations are every where an exception from this rule, is somewhat doubted.

*Power of Attorney sent to England
for recovering a debt due there.*

Know all men by these presents, That I, A. B. of C. in the parish of — and county of — in Scotland, gentleman, have made, constituted, and appointed C. D. of the city of — in England, merchant, my true and lawful attorney, for me, and in my name, to ask, demand, levy, sue for, recover, and receive of F. G. of H. in the parish of — and county of — gentleman (*a*), — pounds Sterling, and interest thereof since due, contained in his accepted bill to me, dated the

the — day of — payable —
duly protested, and the protest recorded
in the books of council and session the
— day of — (b); and in
default of payment thereof, to use and
take all lawful ways and means, in my
name or otherwise, for recovery thereof,
to compone, transact, and agree the same;
and, on receipt thereof, discharges and
acquittances to grant; and to do all acts
and things whatsoever concerning the pre-
misses, as fully, in all respects, as I might
do if I were personally present; and to
make and appoint an attorney or attornies
under him for the purposes aforesaid, if he
shall see cause. *Ratifying and confirming*
all and whatsoever things my said attor-
ney shall lawfully do, or cause to be done
in the premises, in virtue of these presents.
In witness whereof I have hereunto set my
hand

hand and seal, at C. afore said, the — day of — in the year of our Lord one thousand, &c. and of the reign of his Majesty George the Third, by the grace of God, King of Great Britain, France and Ireland, the — year.

Signed, sealed and delivered
(being first duly stamped) } A. B. L. S.
in presence of

J— K—.

L— M—.

If the debt is due for goods furnished by a merchant in this country to a person there, it will be the same as in the preceding example, except the names and designations, and that what follows may be insert in place of what comes in betwixt (a) and (b)—‘The sum of — pounds of lawful money of Great Britain,

'tain, for the amount or balance of fun-
 'dry goods and merchandise, sold and
 'shipped by me, for and by order of the
 'said F. G. on board the ship ——— Cap-
 'tain ——— for ——— in the month of
 '—— in the year one thousand, &c.
 'years, as will appear from the said in-
 'voices.'

Where the money is due by account,
 affidavit is generally made to the Justice
 of the debt. It will occur that, for the
 reason before mentioned, this will be more
 proper than the Scotch form of an *oath of*
verity, though in substance the same:
 The form of such affidavit may be as fol-
 lows :

Affidavit

Affidavit by the Creditor on the justice of his Debt.

(Copy the invoice, and say,)

A — B — of — in the county of — merchant, personally *appeareth* before me R — S — one of his Majesty's Justices of the peace for the said county, residing at — aforesaid, *and maketh oath*, that F. G. of — — county, England, stands justly indebted unto this deponent in the sum of — of lawful money of Great Britain, for the amount or balance of the invoices hereunto annexed, of sundry goods and merchandise sold and shipped for and by order of the said F. G. by this deponent, on board the ship — Captain —
for

for ——— in the month of ——— in
 the year ——— as appears from the
 said annexed invoices, which are just and
 true in every article thereof; neither he
 this deponent himself, nor any other per-
 son or persons for him, nor on his account,
 (to the deponent's knowledge and belief)
 have ever received the amount of the said
 invoice, or any part thereof, nor any sa-
 tisfaction or security for the same, or any
 part thereof, so that the said sum of —
 Sterling still is and remains truly due,
 owing, and payable by and from the said
 F. G. unto this deponent, in manner as
 in the said invoices is hereby mentioned
 and set forth.

Sworn at ——— *aforsaid*, the
 ——— day of ——— one thou-
 sand seven hundred and } A. B.
 eighty ——— years.

Before me

R. S. J. P.

It

Powers of Attorney.

It is to be observed, that, in Scotland, writings executed in the stile there used, with the solemnities of date, writer, and witnesses names and designations insert, and the parties and witnesses subscribing thereto, and upon paper properly stamped, are of themselves probative as soon as executed, till decret of reduction and improbation thereof by the supreme court is obtained : but in England it is only ancient deeds of thirty years standing that prove themselves. Modern deeds and other writings must be attested and verified by parole evidence (evidence *by word of mouth* or oath) of witnesses. By statute

L tute

tute 5. Geo. II. cap. 7. § 1. ‘ In any suit
‘ in any court of law or equity in the
‘ plantations, for any debt or account
‘ wherein any person residing in Great
‘ Britain shall be a party, it shall be law-
‘ ful for the plaintiff or defendant, and
‘ for any witness to be examined, to prove
‘ any matter by affidavit, (or in the case
‘ of a quaker) solemn affirmation, before
‘ any mayor or other chief magistrate of
‘ the city or town in Great Britain,
‘ where, or near which, the person shall
‘ reside, and certified under the common
‘ seal of such city or town, or the seal of
‘ office of such mayor or chief magistrate;
‘ and every affidavit or affirmation so made
‘ and certified, shall be of the same force
‘ as if the persons had appeared and sworn
‘ or affirmed *viva voce*, in open court, or
‘ upon commission.’

As

As denial of the subscription of modern writings in the English form must be attended with much loss of time, and put the person using such writing to considerable trouble, to obviate this objection in writings sent to any of the British dominions abroad, one of the witnesses appears before a magistrate of a borough adjacent, (for one witness is held as evidence in England) and makes oath, that he was present and did see the same subscribed, sealed, and delivered.

Sometimes the party appears and makes oath.

This is indeed a very proper form of proceeding, as it prevents the danger of being imposed upon by false powers of attorney.

Chief Magistrate's Certificate.

To all to whose knowledge these presents shall come,

Lord provost and chief magistrate of the
(a) town of head bo-
rough of the county of

in that part of Great Britain called Scot-
land, *do hereby certify*, that, on the day
of the date hereof, personally came and
appeared before me

the deponent named in the affidavit here-
unto annexed, being a person well known
and worthy of good credit, and by so-
lemn oath which he then and there took
upon the Holy Evangelists of Almighty
God, did solemnly and sincerely declare,
testify, and depose to be true, the several
matters

(a) or of the royal borough of

Affidavit of the Witness.

maketh oath,
and faith, That he was present, and did
see A. B. of C—— in the power of
attorney hereunto annexed, named, sign,
seal, and acknowledge, and for his own
act and deed in due form of law execute
and deliver the said annexed power or
letters of attorney bearing date the ——
day of —— one thousand, &c.; and
that the deponent did write and subscribe
his name as a witness to the due execu-
tion of the said letters of attorney, and
did also see the
other subscribing witness, write and sub-
scribe

Write his name as a witness to the due execution thereof.

Sworn this — day of —
in the year of our Lord one
thousand seven hundred, &c. }

Before me — — Provost.

If the party himself makes affidavit, the Provost's certificate bears, ' That, on the
' day of the date hereof, personally came
' and appeared before me A. B. of C. in
' the annexed power of attorney named,
' who, by solemn oath, &c. deposes to
' be true the several matters and things
' mentioned and contained in the affida-
' vit hereunto annexed.

' In faith,' &c.

Affidavit.

Affidavit.

‘ A. B. of C. ——— county in Scot-
‘ land, Gentleman, maketh oath and
‘ faith, that he signed, sealed, and as his
‘ own act and deed delivered the power
‘ or letter of attorney hereunto annexed,
‘ and that ——— and ——— were wit-
‘ nesses to the due execution of the said
‘ power of attorney, and did severally set
‘ and subscribe their names thereto.’

Sworn, &c.

If the sum to be uplifted by the attor-
ney were due by account, and affidavit
were to be made of the justice of it, it
might be done also before the chief ma-
gistrate; or, if done before a justice of
the

the peace, (or other judge) it would not be improper that the chief magistrate required the evidence of one witness, or more, and should thereupon, or upon his own knowledge, ‘certify that the signature R. S. set and subscribed to the jurat at the foot of the affidavit of A. B. of C. hereunto annexed, is the true signature and proper hand-writing of R. S. justice of the peace for the county of — : That the said R. S. is in the commission of the peace for the said county, duly qualified by taking the oaths according to law, and resides and acts as such ; and that, to all sentences past, affidavits taken, and writings so signed by him in relation to the said office, obedience is paid, and faith and credit is and ought to be given in judgment, or thereout.’

Then

Then follows the power of attorney.

Power of Attorney for recovering the debts due to, and managing the estate and effects of a Brother-german deceased, in Jamaica.

Know all men, by these presents, that I A. B. of the parish of — in the county of —, North Britain, farmer, brother of the deceased J. B. late of Montegobay in the island of Jamaica, surgeon, have made and ordained, and by these presents do make, ordain, and in my place and stead put and constitute C. D. of the parish of St James's, in the said island of Jamaica, Esq; to be my true and lawful attorney for me, and in my name, and on my behalf, to call to account and
bring

bring to a reckoning, and to adjust and settle accounts with all and every person or persons in the said island of Jamaica afore said, who is, or are, or shall be indebted to the estate of the said J. B. deceased, upon any account, by any ways or means whatsoever, or howsoever, and also to demand, levy, sue for, recover, and receive, by all lawful ways and means whatsoever, of and from all and every such person or persons afore said, and all, every, or any person and persons whom it doth, shall, or may concern, all and every such debts, dues, sum and sums of money, and likewise all and singular such goods, commodities, merchandises, and effects which now are and shall become and grow due, owing. payable, and belonging to the estate of the said J. B. deceased, upon, or by virtue of any mortgages

gages or securities made to the said J. B. deceased, or upon any bond, bill, book, or open account of trading or dealing, or upon any other account, or by any other ways or means whatsoever or howsoever, in any manner of way ; and likewise to demand, levy, sue for, recover, and receive, by all lawful ways and means whatsoever, of and from all and every person or persons whom it doth, shall, or may concern, all such sum and sums of money which now are, and which shall become and grow due and payable for rent, and arrears of rent, for and in respect of all, every, and any messuages, lands, and plantations, of and belonging to the estate of the said J. B. deceased, in the island of Jamaica aforesaid ; and, if need be, to distrain for the same, and to sell and dispose of such distress, according as the law

law in that behalf directs ; and upon receipt or recovery of all or any of the said debts, dues, sum, and sums of money, rent, and arrears of rent, goods, and effects, or any of them, or any part thereof, sufficient acquittance and discharges for the same for me, and in my name, from time to time, to make and give ; and generally to do, negotiate, transact, perform, and accomplish all other acts, matters, and things for me, and on my behalf, in and about the premises, and in, about, and concerning the estate of the said J. B. deceased, in the said island of Jamaica, as fully to all intents and purposes as I might or could do, if I was personally present ; and likewise for me, and in my name, and on my behalf, to enter into, and take possession of all, every, or any of the messuages, lands, and plantations,

M

late

late of and belonging to the said J. B. deceased, in the said island of Jamaica aforesaid, with all and every the buildings, negroes, servants, cattle, coppers, mills, utensils, appurtenances, and things whatsoever, thereunto, or to any of them belonging, and from time to time to demise and let the same, or any of them, or any part thereof, by lease, for such term or terms of years, or at will, as he my said attorney shall think fit; and to do and perform all such acts and things for perfecting thereof as shall be requisite and necessary in that behalf. And I do hereby ratify and confirm, and shall and will, at all times, ratify and confirm all and whatsoever the said C. D. Esq; shall legally do or cause, or procure to be acted, done, and accomplished, in and touching the premises; provided always, that my said attorney,

attorney shall be liable, and obliged to account to me for his intromissions and management, in virtue hereof; but he shall not be liable for omissions of any kind. And I reserve full power to myself to revoke these presents; and appoint another attorney or attornies, in place and stead of the said C. D. Esq; at my pleasure. In testimony whereof, I have hereunto set my hand and seal, this

day of _____ in the year of our Lord one thousand seven hundred and eighty; and of the reign of his Majesty George the Third, by the grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, &c. the twenty _____ year.

Signed, sealed, and delivered, }
(being first duly stamped) } A. B. L. S.
in the presence of

J— K—
L— M—

M 2

Ob.

Observations.

By said statute, 5th Geo. II. cap. 7. §
4. ‘ The houses, lands, negroes, and o-
‘ ther real estates, situated within any of
‘ the said plantations, belonging to any
‘ person indebted, shall be liable to all just
‘ debts and demands, and shall be *assets*,
‘ in like manner as real estates are by the
‘ law of England liable, to the satisfaction
‘ of debts due by bond, or other *specialty*,
‘ and shall be subject to the like remedies
‘ in any court of law or equity in the
‘ plantations, in like manner as personal
‘ estates.’

Assets real, are such estate as would
descend by inheritance to the heir bur-
dened with the debts of the ancestor, and
which, if he renounce to enter heir to,
may

may be attached by the creditor for the debts due to them; what in our law is termed *hereditas jacens*. *Assets* personal, the testament of the deceased, what would descend to his executors, and is the subject of confirmation by them or *executor creditors*.

Specialty, any special obligation, as a bond, bill, &c.

Power of Attorney by a Legatee, for himself, and as guardian for his Children, also Legatees, for recovering Legacies left them by a person in Jamaica.

To all to whom these presents shall come, I

Lord Provost of the city of Edinburgh,

M 3

in

in that part of Great Britain called Scotland, in pursuance of an act of parliament, made and published in the fifth year of the reign of his late Majesty George the Second, intituled, 'An act for the more 'easy recovery of debts in his Majesty's 'colonies and plantations,' &c. do hereby certify, that on the day of the date hereof, personally came and appeared before me, P. Q. of R. county in Scotland aforesaid, gentleman, the deponent named in the affidavit hereunto annexed, being a person well known, and worthy of good credit; and by solemn oath, which the said deponent then took before me, upon the holy Evangelists of Almighty God, did solemnly and sincerely declare, testify, and depose to be true the several matters and things mentioned and contained in the said annexed affidavit. And do also certify,

tify, that W. C. Esq; of ——— sheriff-depute of the sheriffdom of ——— who hath granted or issued the letters of tutory, act. of curatory or guardianship also annexed, is sheriff-depute of the said sheriffdom, by royal authority, duly appointed, qualified, and sworn into office by taking the oaths to government, according to law; and that ——— sheriff-clerk of the said shire is also duly appointed to his said office, and qualified, and sworn into office; and that to all decrees, acts, and other writings, signed by the said W. C. sheriff-depute, in relation to the said office, or extracted by the said ——— sheriff-clerk, from the sheriff-court-books, or records of the said shire, due obedience is paid, and faith and credit is
and

and ought to be given in judicature or thereout.

In faith and testimony whereof, I the said Lord Provost have caused the seal of the said city of Edinburgh to be hereunto put and affixed; and the power of attorney and certificates, mentioned and referred to in and by the said affidavit, to be hereunto also annexed, together with the letters of tutory, act of curatory, or guardianship.—
Dated in ——— the —— day of ——— in the year of our Lord one thousand, &c.

L. S.

(Provost signs here.)

It is here to be observed, that in general the father is tutor and curator, or administrator.

ministrator-in-law to his children, without any *service*, *nomination*, or other form of law; but in this case, as will appear from the power of attorney, the father is one of the executors, and of course debtor, in the sums to be uplifted by the power of attorney, if he inclined to take any part in the administration, and therefore optional to the children to chuse other tutors and curators, or to obtain a *curator ad lites*. Tutors or curators must also be appointed where a subject is left to children, exclusive of their father's management, and none mentioned in the will or devise of the person leaving such subject, in which case the form will differ in title from the above.

(Follows affidavit of the witness.)

P—

P— Q—— of R—— county, gentleman, being duly sworn, maketh oath and faith, that he was present and did see A. B. of C. in the power of attorney hereunto annexed, named, sign, seal, and as for his own act and deed deliver the said annexed power, or letters of attorney; and that the name P. Q. set and subscribed to the due execution thereof, is of the proper hand-writing of this deponent. And this deponent further faith, that he was present and did see the Rev. G. H. minister of the gospel at —— sign and attest the certificate hereunto annexed; and that the name G. H. thereto subscribed, is of the proper hand-writing of the said G. H. and that the said certificate is duly extracted from the register-books of the said parish of —— he the deponent having carefully examined and compared the
same

same with the said books. And this deponent further saith, that he is now, and hath been, for many years last past, acquainted with the said A. B. in the said annexed power or letters of attorney named. Saith, that the said A. B. was always reputed, deemed, and taken to be the brother of P. B. late of the island of Jamaica deceased, in the said annexed power or letter of attorney also named. *And this deponent further saith*, that he also knows and is well acquainted with P. B. E. B. I. B. R. B. S. B. and W. B. the sons and daughters of the said A. B. in the said annexed power, or letter of attorney, also named. And also six of the legatees named in the last will and testament of the said A. B. as this deponent hath been informed, and verliy believes; and that the said P. B. E. B. I. B. R. B. S. B. and W. B.

B.

B. have been from the time of their respective births, and now are deemed, reputed, and taken to be the children of the said A. B. the brother of the said P. B. deceased; and that they the said children are all now minors, under the age of twenty-one.

Sworn this day of
one thousand, &c. P. Q.
Before me ——— Provost.

(Follows the power of attorney.)

To all to whom these presents shall come,
A. B. of C. near Edinburgh, in that part
of Great Britain called Scotland, farmer,
brother, and one of the legatees and ex-
ecutors named in the last will and testa-
ment of P. B. late of the parish of King-
ston,

ston, in the island of Jamaica, gentleman ;
and also tutor and guardian of the person
and estate of P. B. E. B. J. B. R. B. S. B.
and W. B. the sons and daughters of the
said A. B. also six of the legatees named
in the last will and testament of the said P.
B. deceased, sends greeting ; whereas the
said P. B. deceased, did, in and by his last
will and testament, bearing date on or
about the ——day of —— in the year of
our Lord one thousand seven hundred, &c.
inter alia, give and bequeath unto his ne-
phew the said P. B. by the name of P. B.
son of his brother A. B. of that part of
Great Britain called Scotland, the sum of
—— Sterling, together with his mili-
tary accoutrements, watch, and jewels ;
and also thereby gave and bequeathed un-
to his niece E. B. daughter of the said
A. B. the sum of —— (and so take in
N the

the respective legacies ;) . and he did there. by desire, that all and every the above legacies and bequests by him bequeathed, should be sent to Scotland to his said brother A. B. one of the executors therein named ; or, in case of his death, to such person or persons as should lawfully represent him : But, nevertheless, to the use and uses of the said nephews and nieces, to be paid them and each of them respectively, within twelve months next after his decease, agreeable to the intent and meaning of his said last will and testament. But in case all or any of his said nephews and nieces should happen to depart this life before his decease, or within twelve months after his decease, his will and desire was, that the said legacy or legacies to him, or her, or them, so dying, should sink and revert to his estate, and
become

become part of the residuum thereof:
And the said P. B. deceased also thereby
gave and bequeathed unto his said brother
A. B. the sum of ——— pounds Sterling
(in case he should be alive at the time of
his death) to buy him mournings; and
he thereby appointed his brother A. B.
together with D. F. late of the parish of
Kingston aforesaid, merchant, deceased,
and T. R. in the parish of St Andrew's,
in the said island of Jamaica, wright, ex-
ecutors of his said last will, as in and by
the said will and testament, duly proved
and recorded in the secretary's office of
the said island of Jamaica, reference being
thereunto had, may more fully and at
large appear. And whereas the said P.
B. after making the said in part recited
will, departed this life, without altering
or revoking the same; and the said D.
F. and J. R. caused the same to be duly

proved, and letters testamentary were thereon granted to them; and they took upon themselves the burden of the execution thereof in the said island of Jamaica, as in and by the said letters testamentary remaining on record in the said secretary's office, relation being thereunto had, will more fully appear: And whereas the said D. F. hath lately departed this life, whereby the said J. R. is now become the only surviving executor in the said island of Jamaica; *now know ye* that the said A. B. as well in his own right as tutor and guardian of the persons and estates of the saids P. B. E. B. J. B. R. B. S. B. and W. B. six of the legatees named in the last will and testament of the said P. B. deceased, hath made, ordained, nominated, constituted, and appointed J. F. of the parish of Kingston in the said island of Jamaica

Jamaica aforefaid, attorney at law, to be his true and lawful attorney, for him and in his name, or as tutor and guardian as aforefaid, or otherwise, as the cafe may require; and for, or on his account, or as tutor or guardian aforefaid, to ask, demand, fue for, levy, recover, and receive of and from the faid J. R. the furviving executor of the faid P. B. or fuch other perfon or perfons whom it doth, fhall, or may concern, all and every fuch fum or fums of money, debts, dues, legacies, or other perfonal eftate, that now are due, owing, or belonging to him the faid A. B. either in his own right, or as tutor or guardian aforefaid, of the perfons and eftates of the faid P. B. E. B. J. B. R. B. S. B. and W. B. his children, or upon any other account whatfoever; and upon receipt of all or any of the faid fum, or fums

of money, debts, dues, legacies, or other personal estates or demands as aforesaid, to give, sign, seal, execute, and deliver, in his name or otherwise, as the case may require, good and sufficient receipts, releases, acquittances, or other sufficient discharges of the same, or any part thereof. But upon non-payment thereof, or of any part of the same, to take and pursue all such lawful ways and means for the recovery thereof, or any part thereof, as fully and effectually to all intents and purposes, as if the said A. B. was personally present and did the same; and also, if occasion shall be, or need require, to file one or more bill or bills, in the high court of chancery of the said island, against the said J. R. the surviving executor of the said P. B. deceased, in the said island of Jamaica, and such other person or persons as his said attorney shall think proper and necessary

necessary for the recovery of the said several legacies herein before particularly mentioned, or any or either of them, or any part thereof; and to prosecute the same with effect, as fully and effectually as if the said A. B. was personally present and did the same himself; giving and hereby granting unto his said attorney, his full and whole power and authority in the premises to do, negotiate, execute, transact, and perform, all and every matter and thing whatsoever, which shall be thought requisite and necessary therein, as fully and effectually, to all intents and purposes, as if he was personally present and did the same; and one or more attorney or attorneys under him, for all or any of the purposes aforesaid, to nominate and appoint, and, at his pleasure, to revoke, ratifying, and hereby allowing and
con-

confirming all and whatsoever his said attorney, or his substitute or substitutes, shall lawfully do, or cause to be done, in and anent the premisses, by virtue of these presents. *In witness* whereof, the said A. B. in his own right, and as tutor and guardian aforesaid, hath hereunto set his hand and seal, at ——— aforesaid, the ——— day of ——— in the year of our Lord one thousand seven hundred, &c.

Signed, sealed and delivered
 (being first duly stamped) } A. B. L. S.
 in presence of

In his own right, and as guardian of the persons and estates of P. B. E. B. J. B. R. B. S. B. and W. B.

A—— N——.

J—— W——.

Power

Power of Attorney sent to the East-Indies, for uplifting Money due to a Person who had died there, from former Attornies and others, and for calling them to account.

(Begin with the Provost's certificate and affidavit, and then follows the power of attorney. N. They are written on separate sheets.)

Know all men by these presents, That
'I, A. B. of C. in the county of ——— in
that part of Great Britain called Scotland,
writer, have made, constituted, and ap-
pointed, and by these presents make, con-
stitute, ordain, nominate, authorise, and
appoint,

appoint, Mr G. G. of Calcutta, gentleman; whom failing, by death or non-acceptance, Mr P. D. ensign in the service of the honourable the united company of merchants of England, trading to the East Indies, to be my certain, true, and lawful attorney, for me and in my name, and for my use and behoof, to ask, demand, levy, sue for, recover, and receive of and from J. M. of Calcutta, gentleman, J. M. also of Calcutta, gentleman, and from and of all and every other person or persons whomsoever, whom it doth, shall, or may concern, all and every such sum or sums of money, debts, dues, goods, effects, and things whatsoever, which now are and shall be, and grow due, owing, payable, and belonging to me the said A. B. in my own right, and as executor or administrator of the goods, chattels, and effects of

C.

C. B. captain in the service of the said honourable united company of merchants of England trading to the East Indies, my son, now deceased, upon, or by virtue of any bond, bill, ticket, book, or open account of trading or dealing, or upon any account, ways or means howsoever ; and, if need be, to call to account, and bring to a reckoning, all or any person or persons concerned in the premises ; and upon receipt or recovery of all or any such sum or sums of money, debts, dues, goods, effects, or other things, or any part thereof, sufficient acquittances and discharges for me, and in my name, from time to time, to make and give, giving, and hereby granting unto my said attorney, full power and authority in and touching the premises, to sue, pursue, arrest, attach, seize, sequesterate, implead, imprison, condemn,

demn, and prosecute, and thence and thereof again to acquit, discharge, and out of prison to release ; also for me to appear, and my person to represent, in all or any court or courts, or other places, as demandant or defendant, in any suit, action, or appeal, for, or by reason of the premises ; and generally to do, act, and perform all other matters and things requisite and necessary, as fully as I myself might or could do, were I personally present : And I do hereby ratify and confirm all and singular whatsoever my said attorney shall legally do or procure to be done, in and about the premises ; declaring hereby, that my said attorney shall not be chargeable for omissions, but only for his actual intromissions with my estate and effects by virtue hereof, after deduction of his disbursements in my affairs, and a reasonable

sonable gratification for his trouble.—

In witness, &c.

OBSERVATIONS.

It is to be observed on this power of attorney, that it is executed by the father, who, by the law of England, is preferred to the administration before brothers and sisters.

As the laws of this country and of England differ considerably in respect to administration of the estates and effects of persons deceased, I shall here take the opportunity of mentioning wherein they are different. In both, the executor named in the testament is preferred. Any other person in Scotland, who hath the goods of the person dying intestate committed to
O his

his charge, by the commissary of the commissariat, who, since the Revolution, comes in place of the bishop of the diocese, is termed *executor-dative*. In England it is still done by the bishop, sometimes termed the ordinary, as being the ecclesiastical judge-ordinary; and the person so appointed is termed *administrator*. In Scotland, failing such nomination, 1. universal disponees are preferred; 2. the children; 3. the brothers and sisters, and other nearest of kin; among whom the father is the first after the brothers and sisters, then uncles, &c.; 4. the relict; 5. creditors; 6th, and lastly, special legatees.—By the law of England a testament may be in effect a general disposition; for there is no distinction of legal shares to wife and children, and dead's part; the whole of a man's effects are what we would

term

term *dead's part*, that is, he may test on them. In case of no will, administration is granted, 1. to the husband, of the wife's goods and chattels; 2. to the wife, of the husband's goods and chattels; 3. if there be no husband or wife, to the children, sons or daughters; 4. if there be no children alive, to the father or mother; 5. then to the brother or sister of the whole blood, or of the half blood; 6. and if there are none such, to the next of kin, as uncle, aunt, or cousin; 7. then to a creditor of the deceased; or, 8th and lastly, to any person at discretion of the ordinary. An ordinary may grant administration to a father of a son, or to the son's wife, at his election; and where two are equal in degree of kindred, to which of them he pleases.—*Administrators* must give surety to exhibit inventory of

the goods of the deceased, render a just account, and make a just distribution of the surplus according to law.

Where persons die in England intestate, their estates (*i. e.* goods) are to be distributed; one third part to the wife, and the others equally among the children and their representatives: If there be no children, one moiety of the personal estate shall go to the wife, and the residue equally to the next of kin; if there is no wife but children, it shall be distributed among such children; and if there be no wife or children, it shall go to the next of kin in equal degree. When children shall die after their father, without wife or child, the mother, and every brother and sister, and their representatives, shall have equal share in the estate of such intestates:

testates : But no representatives are allowed after brothers and sisters children ; and children advanced by the intestate in his lifetime, with any estate equal to the other shares, are excepted, though not the heir at law, who is to have an equal share of the distribution, notwithstanding what he may have by descent. Creditor-administrator may retain the goods to satisfy his debt.

It may be observed, that in *Scotland* succession by nearness of kin or kindred, is, first, to descendants, as children, grandchildren, &c. then to collaterals, that is, to brothers and sisters ; then to ascendants, viz. to father, grandfather, &c. and their descendants and collaterals : But there is no succession through the mother of the deceased, and no representation in

moveables of grandchildren, as coming in place of their parents, to compete with their uncles, aunts, &c. except in cases betwixt the full and half blood; and where there is heritage, the heir has no part of the moveables, unless he collate or slump the heritage and executry, in which case he is entitled to draw an equal or proportional share with the others in the same degree of kindred. In *England*, the next of kin is first in the right line descending, then in the right line ascending, and then in the collateral line. In the right line ascending, the father and mother are always in the first degree of kindred: But if there are no kindred in the right line descending, the *inheritance of lands* goes to the collateral line: But it never ascends in the right line upwards, if there are kindred in the collateral line, though

though it may ascend in that line : Because, by the feudal system, the father must of necessity have been the person vested in the fee before his son ; and on this account the father was antiently by our law also excluded.

It is further to be observed with regard to *wills* in England, that by statute 32d and 34th H. VIII. c. 5. lands may be left by *last will and testament*.—In a *will* of goods, there must be an executor appointed, but not in one of lands only without goods, an executor having nothing to do with lands. If lands are given by *will*, it is called a *devise* ; if goods and chattels, a *legacy*.—In lands the *devisee* shall enter without the appointment of others, or without any further *grant*, *livery*, &c. ; in the case of goods and chattels,

chattels, there must be the assent of the executor. If *lands* are given and devised by *will*, the will ought to be proved in the *chancery*; and of *goods*, it must be in the *spiritual court*. A *will* both of *lands* and *goods*, may be proved in the *spiritual court*: The bishop of the place where the person dies is regularly to grant administration. Where the person dying hath goods in several dioceses, which are *bona notabilia*, (*i. e.* to the extent of L. 5 Sterling) administration must be granted by the archbishop in the prerogative court of Canterbury and York; a power similar to that of the commissaries of Edinburgh of confirming the testament of those who die in foreign parts having goods in this kingdom. And this leads to and points out the use of the following power of attorney.

Power

*Power of Attorney for procuring
Letters of Administration of the
Estate of a Person who died at sea
Intestate.*

Whereas A. B. late of — in the East Indies, a bachelor, the only son procured of J. B. of C. in North Britain, writer, and E. his wife, died at sea without making any will.

Now know all men by these presents, that I the said J. B. father of the said deceased A. B. have nominated and appointed, and hereby nominate, constitute, and appoint C. D. of — Esq; to be my true and lawful attorney, to appear before the
Right

Right Worshipful George Hay, doctor of laws, master keeper or commissary of the prerogative court of Canterbury, his surrogate, or some other competent judge, and to pray and procure letters of administration of all and singular the goods, chattels, and credits of the said A. B. deceased, to be committed and granted to him for my use, behoof, and benefit, under the seal of the said prerogative court of Canterbury; and also to pray and procure letters of administration of the goods, chattels, and credits of the said A. B. deceased, in any other court or courts in Great Britain, or elsewhere, for my behoof; (then may follow a common power to uplift and receive this) and likewise for me, and in my name, and for my behoof, to ask, demand, sue for, recover, and receive, &c.

Powers

Powers of attorney by seamen for uplifting prizes, or bounty money, wages, and arrears, are got at the navy-office, (printed with blanks for the names, and stamped in a particular manner) by any person who applies. With regard to which powers it is to be observed, ‘ that, by statute
‘ 20th Geo. II. cap. 24. § 6. no letter of
‘ attorney made by any seaman, marine,
‘ or soldier, belonging to any ship of war,
‘ or vessel in his Majesty’s service, or o-
‘ therwise in the service of his Majesty,
‘ or having letters of marque, or belong-
‘ ing to any privateer, or by their execu-
‘ tors or administrators, in order to em-
‘ power any person to receive any share of
‘ such prizes or bounty-monies, shall be
‘ valid, unless the same be made revo-
‘ kable, and for the use of such seamen,
‘ &c. and be signed and executed before,
‘ and

‘and attested by the captain, and one o.
 ‘ther of the warrant or signing officers
 ‘of the ship, or the clerk of the cheque
 ‘of one of his Majesty’s dock-yards, or
 ‘the mayor or chief magistrate of some
 ‘corporation.’

The words, *unless the same be revokable*, seem to have proceeded from this consideration, that an assignment differs little in form in England from a power of attorney, as will appear from the form of an assignment, added as an appendix to these powers of attorney; as, by another section of the said statute, ‘it is enacted, that all
 ‘sales, bills of sale, contracts, agreements,
 ‘and assignments of shares of prizes, &c.
 ‘taken from the enemy, by ships of war,
 ‘or vessels in the service of his Majesty,
 ‘or having letters of marque, and all
 ‘sales,

‘ sales, &c. of bounty-money, which shall
‘ be made at any time after the 1st June
‘ 1747, shall be void.’

A P P E N D I X.

*Form of an assignment of a Bond in
the English form.*

To all people to whom these presents shall
come, greeting ; Whereas A. B. of —
&c. in and by one bond or obligation,
bearing date — became bound to
C. D. of — &c. in the penal sum of
— lawful money of Great Britain,
conditioned for the payment of —
and interest at a day long since past, as
by the said bond and condition thereof

P

may

may appear. And whereas there now remains due to the said C. D. for principal and interest on the said bond, the sum of ——— *Now know ye*, that the said C. D. for and in consideration of the said sum of ——— of lawful British money to him in hand paid by E. F. of ——— &c. the receipt whereof the said C. D. doth hereby acknowledge, he the said C. D. hath assigned, and set over unto the said E. F. the said recited bond or obligation, and the money thereupon due and owing, and all his right and interest of, in, and to the same; and the said C. D. for the consideration aforesaid, *hath* made, constituted, and appointed, and by these presents doth make, constitute, and appoint the said E. F. his executors and administrators, his true and lawful attorney and attornies irrevokable, for him, and in his name, and
in

in the name and names of his executors and administrators, but for the sole and proper use and benefit of the said E. F. his executors, administrators, and assigns, to ask, require, demand, and receive of the said A. B. his heirs, executors, and administrators, the money due on the said bond; and, on non-payment thereof, he the said A. B. his heirs, executors, and administrators, to sue for and recover the same; and on payment thereof, to deliver up and cancel the said bond, and give sufficient releases and discharges therefor, and one or more attornies under him to constitute; and whatsoever the said E. F. or his attorney or attornies shall lawfully do in the premisses, the said C. D. doth hereby allow and affirm: *And* the said C. D. doth covenant with the said E. F. that the said C. D. hath not recei-

ved, nor will receive, the said money due on the said bond, or any part thereof; neither shall or will release or discharge the same, or any part thereof, but will own and allow of all lawful proceedings for recovery thereof; he the said E. F. saving the said C. D. harmless of and from any costs that may happen to him thereby. In witness, &c. Signed, &c.

Submissions of disputed Marches; of Division of Lands among Persons having a joint undivided Property; of Division of Commonities; and of Lands lying run-rig.

All actions in Scotland, antiently commenced by *briefes* procured from the
chan-

chancery, directed to the judge-ordinary, who tried the matter by a jury, upon whose verdict judgment was pronounced. This is still the case for the most part in England, and a few of them are to this day used in Scotland ; as brieves of terce ; of division of lands possessed *pro indiviso* ; of lining, or settling the boundaries of tenements within burgh ; and of perambulation, for ascertaining the marches of rural tenements, which are only pleadable, and seem to be of the nature of the brieves above mentioned, on which action anciently proceeded. Besides these, there are used brieves of mortancestry, tutory, idiotry, or furiosity ; the verdicts whereof are retourable to chancery ; that is, in the retourable ones, the retour of the service is sufficient instruction of the matter to which they relate : Thus, for instance, on

the brieve of mortancestry, upon the retour of the special service of an heir, a precept is issued from the chancery for infesting him, without any decret declaratory, or other form. Pleadable brieves must be executed against the party having interest; whereas in general the retournable ones are executed at the market-crofs against all and fundry.

Submission of disputed Marches.

When neighbouring heritors cannot agree about the marches of their respective lands, brieves of perambulation may be obtained; which are directed to the judge-ordinary, (the sheriff or steward-depute) to cause an inquest of fifteen sworn men perambulate the meiths and marches
betwixt

betwixt the lands, and to cause the same be observed as they shall have been perambulated by the inquest. The inquest on this brieve must be persons who have heritage of their own, and dwell *maist ewest* (*i. e.* nearest) to the lands, unless the marches be instructed by bounding charters, or other evidence in writing. See act parl. 1579, c. 79.—In case any of the parties thinks himself aggrieved, he may apply to the court of session for review of the sentence ; or, where one of the parties disturbs another in his possession, the person so disturbed may raise an action of molestation. Where this action is pursued before the court of session, the judges are, by act of parliament 1587, c. 42. ordained to remit the cause to the sheriff of the county where the lands lie, who is empowered to take cognition of the marches,

marches, and put the facts contained in the libel and defences, to the knowledge of an inquest, consisting of persons dwelling in the parish, most of them landed men : But the court, in practice, ordinarily allow a proof to be brought before themselves, and give judgment thereon. A process of declarator of property is sometimes conjoined with the action of molestation ; in which case, the court of session alone is competent to the action. Brieves of lining mentioned above are, in burgal tenements, of the same nature and effect as those of perambulation in rural ones : They are directed to the provost and bailies of a royal borough, to cause an inquest of *twelve* burgesses *line* the tenement in dispute, and cause the same to be so observed.

To

To prevent the trouble and expence with which either the proceeding upon these brieves, or insisting in an action of molestation, is attended, which is very considerable, often more than the value of the part in dispute, submissions are frequently entered into by the parties for terminating all disputes betwixt them relating to these matters.

Submissions betwixt Heritors of conterminous Lands concerning their Marches.

The parties following, viz. A. B. Esq; of C. heritable proprietor of the lands of C. lying in the parish of — and shire of — on the one part, and C. D. Esq; of E.

E. heritable proprietor of the lands of E. lying in the parish of ——— and shire foresaid, *on the other part (a)*, do hereby submit and refer all questions subsisting betwixt them, with regard to the meiths and marches betwixt their property lands aforesaid, to the final sentence and decret-arbitral to be given forth and pronounced by F. G. Esq; of H. and J. D. sheriff-clerk of ——— arbiters mutually chosen by the said parties, with full power to the said arbiters to take all manner of probation necessary by write, witnesses, or oath of parties; and to judge, ascertain, and determine the meiths and marches aforesaid (*b*), and to give forth and pronounce their final sentence and decret-arbitral betwixt and the ——— day of ——— next to come, or betwixt and any other day or days to which the said arbiters

ters

ters may prorogate this submission, which they are hereby empowered to do ; with power likewise to the said arbiters, in case of variance betwixt them in opinion, to chuse an oversman : And, whatever the said arbiters, or oversman, in case of variance, shall do, declare, and determine in the matter hereby submitted, the said parties bind and oblige them, their heirs, executors, and successors, to stand to, obtemper, and fulfil to each other, under the penalty of L. 50 Sterling ; to be paid by the party failing, to the party observing, or willing to observe the same, in case of failzie, by and attour performance. *Consenting* to the registration hereof, prorogations (if any be) minutes, and decret-arbitral to follow hereon, in the books of council and session, or others competent, therein to remain for preservation ;

vation; and, if needful, that letters of
 horning, on six days charge, and all other
 execution necessary, in form as effects,
 pass hereon; and thereto they constitute
 their
 procurators. In witness, &c.

OBSERVATION.

It sometimes happens, that the heritors
 of the different lands wish to have the
 marches made straighter, for the greater
 convenience of inclosing the lands. The
 method of proceeding, in this case, by
 law, is pointed out by act of parliament,
 December 22. 1669, in these words:—
 ‘Whereas, by the forty-one act of the
 ‘first session of his Majestie’s first parlia-
 ‘ment, intituled, *Act for planting and in-*
‘closing,

‘ *closing of ground*, it is provided, that
‘ where inclosures fall to be upon the
‘ borders of ony man’s inheritance, the
‘ next adjacent heritor shal be at equal
‘ pains and charges in building, ditching,
‘ and planting the dike which divides the
‘ inheritance. And the estates of parlia-
‘ ment, considering the inconveniency and
‘ difficulty the execution of that part of
‘ the act may meet with, in lands march-
‘ ing together where the marches are
‘ crooked and unequal, or where any
‘ part of the bordering ground is unfit or
‘ incapable of bearing a dike, or receiving
‘ a ditch, or hinders the compleating of
‘ the inclosure in an equal line. For re-
‘ meid whereof, his Majesty, with advice
‘ and consent of the said estates, doth sta-
‘ tute and ordain, that whensoever any
‘ person intends to inclose by a dike or
‘ ditch,

Q

‘ ditch, upon the march betwixt his lands,
‘ and the lands belonging to the other he-
‘ ritors contiguous thereunto, it shall be
‘ leifum to him to require the next she-
‘ riffs, or bailiffs of regalities, stewarts of
‘ stewartries, justices of the peace, or o-
‘ ther judges ordinar, to visit the marches
‘ alongst which the said dike or ditches is
‘ to be drawn ; who are hereby authori-
‘ zed, when the said marches are uneven,
‘ or otherways incapable of ditch or dike,
‘ to adjudge such parts of the one or the
‘ other heritor’s ground, as occasion the
‘ inconveniency betwixt them from the
‘ one heritor in favors of the other, so as
‘ may be least to the prejudice of either
‘ party ; and the dike or ditch to be made
‘ to be in all time coming thereafter the
‘ common march betwixt them ; and the
‘ parts so adjudged *respective* from the
‘ one

‘one to the other, being estimated to the
‘just avail, and compensated *pro tanto*, to
‘decern what remains uncompensated of
‘the price, to the party to whom the same
‘is wanting. And it is hereby declared,
‘that the parts thus adjudged *hinc inde*,
‘shall remain and abide with the lands or
‘tenandries, to which they are *respective*
‘adjudged, as parts and pendicles there-
‘of, in all time coming.’

This act, it will be observed, points out the plan of procedure by one of the parties to compel the other to performance; but where parties are equally willing, the same may be done by submission and decret-arbitral; and if, at ascertaining the marches, the heritors wished also to have them in some places straightened for the purpose of building a march-dike, the sub-

mission might proceed as in the example given to letter (a), and go on with a narrative thus: ‘*Considering* that the said parties intend to inclose their property lands aforesaid, and that they cannot agree as to the marches of their said lands, and that it will tend to the advantage of both parties, that the marches of their said lands be ascertained and made straighter where crooked and uneven :’ And then go on to letter (b), and say, ‘ And to straight the same where they are crooked and uneven, in such way and manner as the said arbiter shall judge to be most convenient for the inclosing of the said lands.’ After this clause may also be insert the following clause: ‘ And with power also, in case it should happen in the making of the said march straight, that any of the said parties

'ties should get lands of greater value
'than the other, to decern the party get-
'ting the lands of greatest value to pay
'the difference to the other.'

It may be thought where the marches are thus altered, and one piece of ground given for another, that the parties ought to enter into a contract of excambion of the different parts where the marches are so altered ; but, as in the case of a judicial alteration of them, no such contract seems to be required, a decret-arbitral may, it is apprehended, as well as a decret of the judge-ordinary, make part of the title-deeds of an estate, or serve the purpose of making a general charter or disposition of lands similar to a bounding charter ; so that there seems to be no occasion for any other deed than the de-

creet-arbitral, which may be taken notice of in the after rights of the subject; which, it is believed, is a thing very common in practice: And if, in any case, such contract of excambion were necessary, it would be only where the charter was a bounding one, and the marches very particularly marked out, in which case the submission might bear an obligation on the parties, to convey these parts of the lands taken from the one and added to the other, so as the property might be vested in the person to whom the same was decerned to belong; and for that purpose to grant all writings necessary, but always at the expence of the person requiring the same; which will serve, in case a contract of excambion should afterwards be thought necessary, to oblige either of the parties to enter into it.

These

These submissions and decreets-arbitral ought instantly to be put on record.

Differences about marches have been some times (like the price of the stocking of a farm), both submitted and determined verbally, and proved to have been so by witnesses ; or pointed out by pits, and proof by witnesses allowed, that the parties were present when they were so dug.

See the two following submissions, in which other clauses may be found, which may be thought necessary, in ascertaining or straightening the marches of the lands.

Sub-

Submission for dividing Lands formerly possessed in joint property undivided.

Lands possessed in joint property undivided, may be divided at the instance of any of the parties. A brieve may be obtained for dividing the same by an inquest of fifteen sworn men. This brieve contains in it nothing particular, but simply to divide the lands of ——— lying, &c. betwixt A. B. and C. D. portioners thereof, by an inquest of fifteen persons in the country, nearest and most convenient. This brieve, as before observed, is only pleadable: Submission is here also competent, and frequently used in practice, where the parties

for dividing Lands, &c. 189

parties cannot agree as to the division themselves.—The form of such submission follows.

Submission betwixt a Proprietor of three-fourths and one of one-fourth of Lands, for dividing the same, Minutes and Decreet-arbitral thereon.

The parties after-named, viz. A. B. Esq; of C. heritable proprietor of three-fourth parts of the lands of M. lying in the parish of — and stewartry of K. on the one part, and C. D. Esq; of E. heritable proprietor of the other one-fourth part of the said lands of M. on the other part, considering

sidering that the said lands of M. have, for some time past, been possessed in common by the said parties; and that it will be for their mutual profit and advantage that the same be divided between them according to their respective interests therein, in an amicable manner; and as they incline this division should be made by neutral persons mutually chosen for that purpose, *therefore* the said parties *have submitted and referred*, and hereby *submit and refer*, the division of the said lands of M. houses and pertinents of the same, to the final sentence and decreet-arbitral to be given forth and pronounced by J. W. in M. A. P. in G. W. F. of T. and R. F. in M. arbiters, mutually and neutrally chosen to make the said division, with full power to the said arbiters to take all manner of probation necessary thereanent that they

they shall think proper to require; and to appoint a surveyor or surveyors to measure the said lands, and proper persons, if needful, to value the same, and the houses thereon: And, after having taken all necessary information and proof concerning the premisses, to divide the said lands, houses, and pertinents, betwixt the said parties, in such manner, at such a place, and by such proportion, as they shall think just; quantity and quality always considered. And the said parties bind and obligate themselves, to build and make a sufficient march-dike or ditch upon the march to be made and ascertained by the said arbiters betwixt their several properties, of such quality and dimensions, and in such time as the said arbiters shall appoint, the said A. B. paying one half of the expence, and the said C. D. paying the other

ther half of the expence of the said dike or ditch; and further, to convey each to the other his part of the subjects when divided, so as the property may be absolutely vested: And whatever decision the said arbiters, or, in case of their variance, J. B. Esq; of N. who is hereby, in that event, appointed as their oversman, shall pronounce concerning the premisses, betwixt and the — day of — or betwixt and any other day to which they or their oversman aforesaid shall prorogate this submission, which he or they are hereby empowered to do, the said parties bind and oblige themselves, and their respective heirs and successors, to stand to, abide by, obtemper, and fulfil to each other, under the penalty of twenty pounds Sterling, to be paid by the party failing to the party observing, or willing to observe
the

the same, in case of failzie, by and attour performance. *Consenting* to the registration, &c. (as before.)

Acceptance by the Arbiters.

We the within designed J. W. A. P. W. and R. F's. arbiters, within named, have accepted, and hereby accept of the within written submission, and determination of the matters referred to us thereby; and ordain J. G. land-surveyor in _____ and R. D. land-surveyor at _____ to give in a plan and measurement thereof, betwixt and the _____ day of _____ In witness, &c.

R

De-

*Decreet-arbitral in part, and reference
to Oversman.*

We the within designed J. W. A. P. and
W. and R. F.'s, having accepted of the
within submission, and having this day
met, and perambulated the lands of M.
and carefully and narrowly inspected the
same, and considered a plan and measure-
ment thereof, given in to us, by ———
and ——— have unanimously agreed,
that the within designed C. D.'s share
should be taken off the north end of these
lands, called the C—— and having God
and a good conscience before our eyes,
decern the said C. D.'s share to be laid off
the north end of the said lands called C.

ac.

accordingly; and in regard we cannot agree in opinion with respect to the division thereof, as to the quantity of land that is to be laid off for the said C. D. his fourth share, in consideration of the want of arable ground and houses, (there being none of either upon that part of the said lands,) and the difference of the quality of part of the said lands; therefore devolve the power of fixing the quantity of the said lands to be laid off, and whole other powers intrusted to us to J. B. Esq; of N. oversman, named by the within submission. *In witness, &c.*

*Decreet-arbitral, thereon (written on
a separate paper.)*

I, J. B. of N. oversman, chosen by A. B. Esq; of C. proprietor of three-fourth parts of the lands of M. and C. D. Esq; of E. proprietor of the other one-fourth part of the said lands, in a submission entered into by them, upon the — day of — last, whereby they submitted and referred the division of the said lands of M. houses, yards, and pertinents thereof, to the decision of J. W. in M. A. P. in G. W. F. of T. and R. F. in M. arbiters, thereby mutually and neutrally chosen, to make the said division, with powers to them to do and decide as therein mentioned ; and,

in

for dividing Lands, &c. 197

in case of their variance, they thereby chose me as overfman; considering that the faid arbiters accepted of the faid submission, and upon the — day of — met, &c. (narrate the former decret in part, and reference to overfman,) as from the faid acceptance, decret, and reference written on the back of the faid submission will appear: And having accepted as overfman in the faid submission and reference; and having this day perambulated the faid lands, and pertinents thereof, and visited the houses thereupon, and carefully and narrowly inspected the fame, and boundaries thereof, and considered the difference of the quality of the faid lands; and having also viewed a plan and measurement thereof, given in to the faid arbiters by J. G. land-surveyor in A. and another by R. D. land-surveyor in M. as

appointed by the said arbiters for that purpose; and having deliberately considered the same, and the minute on the back of the said submission, signed by the said arbiters, upon the said — day of — whereby they decerned the said C. D.'s part should be taken off the north end of the said lands: But, in regard they could not agree in opinion as to the quantity to be taken off, they devolved the power of fixing the quantity of the said lands so to be taken off, and whole other powers intrusted to them upon me; and having God and a good conscience before my eyes, do hereby give forth and pronounce my decret-arbitral as follows, viz. I find the whole measure of the said lands extends to 2044 acres Scots statute measure, and that 511 acres is an equal one-fourth part of the measure of the said lands; and

I decern 100 acres more in consideration that it is the north and stormy end of the said lands; and in further consideration that there are neither houses, meadows, nor corn lands in that part of the said division, making in all 611 acres of the north end of the said lands called C. which I now set off to the said C. D. being equal, quantity and quality considered, to one-fourth part of the said whole lands, houses, and pertinents thereof, and have adjudged, decerned, and declared, and hereby adjudge, decern, and declare, 1433 acres off the south end of the said lands, with the houses, yards, and pertinents thereof, to belong to the said A. B. as proprietor of three-fourth parts of the said lands, and the remaining 611 acres, lying in the north end of the said lands called C. to belong to the said C. D. and
having

having a particular regard to the making of a straight march on the said lands betwixt the said parties, find that the said march begins at — burn, where the said lands march with the lands of K. on the west, about three fells south from a large stone upon the K. side of the said burn, and from thence runs in a straight line east, over a little hill called A. and from thence to a hag near the head of the — lane, where the said lands march with the lands of G. on the east, where it terminates; and which division is marked on the said plan, and also caused the said march to be distinctly marked out by pits made, and stones set up therein, and decern accordingly; and decern the said parties betwixt and — to build a stone-dike from the marches set from the — burn to — five quarters

quarters in height, 34 inches broad at the bottom, four quarters whereof to be double, and to put no stones on the top of the dike under half a stone weight, and from the end of the said stone-dike a sufficient stone or turf-dike ; and which several shares of the said lands so marked, I decern and ordain to belong to the said parties, their heirs and successors, as their exclusive property, without any manner of servitude whatever ; and the said pits and stones set up therein, and the said dike when built, and made to be the march between them in all time coming, and to convey to each other the subjects so divided, so as the property may be absolutely vested in terms of the said submission in all points ; and decern and ordain the said parties to perform, implement, and fulfil their respective parts of the premises

ses to each other, under the penalty of twenty pounds Sterling, to be paid by the party failing to the party observing, or willing to observe the same, in case of failzie, attour performance: And ordain these presents to be registered, along with the said submission, in terms of the clause of registration therein contained, that letters of horning, and all other execution needful, may pass hereon. In witness, &c.

This must be written on stamped paper.

*Submissions for division of Commonities,
and of Lands lying Run-rig.*

By act of parliament 1695, c. 38. it is statuted and ordained, That all commonities,

ties, excepting commonities which belong to the king in property, or to royal boroughs in burgage, may be divided at the instance of any having interest, by summons raised against all persons concerned, before the Lords of Session, who are by the said act empowered to discuss the relevancy, and to determine upon the rights and interest of all parties concerned, and to value and divide the same, according to the value of the rights and interests of the several parties concerned; and to grant commissions to sheriffs, stewarts, and their deputies, justices of the peace, or others, for perambulating and taking all other necessary probation; which commission shall be reported to the Lords, and the process shall be ultimately determined by them.

By

By this act the Lords of Session are also empowered, either to divide mosses which happen to be in the said common-
ties, or if such mosses cannot be conveniently divided, to declare that they shall remain common, with free ish and entry thereto, whether divided or not.

The division, where the question is among the common proprietors, is governed by the clause in the statute, *according to the valuation of their respective properties* : But, where the question turned between the proprietor or proprietors, and those that had servitudes of common pasturage upon the property, the rule mentioned in a preceding clause of the act took place by the former practice, *according to the value of the interests of the several persons concerned* : Hence proprietors

were

were allowed a *praecipuum* for their right of property, over and above the share, on account of their own or their tenants possession by pasturage. But now the superficies is only divided, without prejudice to the property: The interests of those having servitudes of pasturage are ascertained by the number of bestial that graze thereon; and if this is indefinite, according to the number that each of them can fodder in winter upon his own dominant tenement.

In division of commonities the share to be allotted to each heritor is appointed to be made next adjacent to his property.

Commonities are also divided by Submission and decreet-arbitral; the form whereof may be as follows.

S

Sub-

*Submission for dividing the Commonty
of W—— Minutes, and Decreet-
arbitral.*

*The parties after-named, viz. A. B. of
C. C. D. of E. F. G. of H. and J. K. of L.
all heritors claiming interest in the com-
monty called W—— lying in the parish
of —— and shire of —— and A. M.
relict of W. K. late of L. for all right and
interest she has in the said commonty, in
virtue of her liferent or locality in the
lands of H. which belonged to the said
W. K. have submitted and referred, and
hereby submit and refer, all claims, ques-
tions, or demands, competent to any of
the*

the said parties against the others; and particularly all questions and controversies concerning the boundaries and limits of the said commonity of W. betwixt the same and the circumjacent property lands belonging to the said parties, and concerning their several rights and interests in the said commonity; and all other questions or disputes that have arisen or may arise concerning the division thereof, to the final sentence, decision, and decret-arbitral of P. Q. in R. R. S. in T. T. U. in V. and W. Y. in Z. arbiters chosen by the said parties (*a*); with power to them, or any three of them, to meet upon the lands of C. E. H. and L. and the said commonity, and there to take a proof by witnesses, writ, or oath of parties, as to the marches between the several property lands belonging to the said parties,

ties, and the said commony, and concerning the said parties, their several rights and interests therein, *and to divide* the said commony among the said parties, according to the respective valuations of those having interest therein, and to do every thing necessary to complete the said division, which the Lords of Session are impowered to do by law, in the case of judicial division (b); and with power to the said arbiters, or any three of them, to give forth and pronounce their final sentence, decision, and decret-arbitral in the premisses, betwixt and the — day of — next, or betwixt and any other day or days to which they shall prorogate this submission, which they are hereby impowered to do : And whatever the said arbiters, or any three of them, shall determine in the premisses, the said parties

sub.

submitters bind and oblige themselves, their heirs and successors, to stand to, obtemper, and fulfil to one another, under the penalty of fifty pounds Sterling, to be paid by any of the parties failing to the observers, or parties willing to observe the same, by and attour performance: *And consenting* to the registration hereof, prorogations, (if any be), minutes, and decret-arbitral to follow hereon, in the books of council and session, &c.

Or the submission may go on as above to letter (a), and from thence to letter (b) be as follows: ‘ With power to the said arbiters, or any three of them, to visit and perambulate, and to take cognizance of the several limits and marches of the said commonity, and to take all necessary probation by writ, oath of party, or by

‘ the oaths of such habile witnesses as shall
‘ be adduced by the parties, for ascertain-
‘ ing the limits and extent of the said
‘ commonty, and the possession of the re-
‘ spective parties therein, and extent and
‘ endurance of their possessions, and of
‘ any interruptions that may have been
‘ made by the parties to one another’s
‘ possessions, and for what farms or lands
‘ such possessions have been had; and to
‘ ordain extracts of the valuation of the
‘ said lands so possessed, to be produced
‘ to them the said arbiters, or any three
‘ of them, met in relation to the said
‘ matter; and likewise to take trial and
‘ cognition, by the oaths of such witnes-
‘ ses as shall be adduced by the said par-
‘ ties, or otherwise, of the different quali-
‘ ties of the ground; and to cause mea-
‘ sure the said whole commonty, and eve-

‘ ny

‘ ry parcel thereof, as the same shall be
‘ distinguished by its different quality :
‘ And, for that end, to call to their assist-
‘ ance persons skilled in measuring
‘ grounds, and to cause them, upon oath,
‘ make out a scheme or map of the said
‘ commonty in its quantity, and of every
‘ parcel thereof, as it shall be distinguished
‘ by its different quality; and thereafter
‘ to proceed to divide the said (a) ground
‘ among the parties having interest there-
‘ in, and that (b) according to the valued
‘ rents of the different lands, as part and
‘ pertinent whereof they possess the said
‘ commonty (c) ; and that in the appoint-
‘ ment

(a) Or, if there are servitudes, take in at (a)
‘ to divide the superficies of the said ground, a-
‘ mong,’ &c. (b) ‘ according to the number of
‘ bestial that graze thereon, or are foddered by
‘ them in winter ;’ and go on after (c) as above.

‘ment of their shares, each heritor’s part
‘shall be set off to him, so as it may be
‘nearest and most convenient to his pro-
‘perty lands; and to put and set march-
‘stones for dividing each heritor’s pro-
‘portion from the other; and also to di-
‘vide, in the same manner, the mosses, if
‘any be, lying within the said commonty,
‘among the said heritors: But in case it
‘shall be instructed to the arbiters, that
‘the said mosses cannot be conveniently
‘divided, to cause leave the same still
‘common, with free ish and entry there-
‘to; and that upon the ground of the
‘said commonty, or any place in the
‘neighbourhood thereof, as shall appear
‘most convenient to the said arbiters;
‘and with power also,’ &c.

Minutes

Minutes thereon.

The parties and arbiters within-named, having all met (except Mr S.) upon the within mentioned commonty, this ——— day of ——— one thousand seven hundred, &c. and having, along with the witnesses brought by the parties, perambulated the marches of the said commonty; and having caused dig pits along the march, according to the direction of the witnesses, in every place except where there are burns, or stripes of running water, which all parties admitted to be the marches in these places; and there appearing to be no difference as to any of the marches, except upon that of C. on a part thereof

thereof where there are two rows of pits dug, and the space betwixt them being inconsiderable, the parties do hereby dispense with examining any witnesses upon the subject, and agree that the arbiters determine the same by an equal division of the difference, or otherwise, as they shall see cause. In witness, &c.

(Signed by the parties and arbiters.)

The same day, the arbiters did, and hereby do, divide the before-mentioned difference, by digging pits in the middle, and shutting up the two rows of pits formerly made; and declare the said pits to be the march betwixt A. B.'s property lands of C. and the said common, in all time hereafter; and do hereby appoint and authorise J. R. in G. and J. B. in N. to make an exact survey of the said common

monty

monty as before marked, and report upon oath the quantity of land contained in it, distinguishing the quantity of mosses, and the quantity of the coarser and better land severally: And the arbiters do hereby prorogate this submission to the — day of — next; and appoint the land-measurers to make their report then, or any time before that day, to which they shall be warned. In witness, &c.

(Signed by the arbiters.)

Decreet-arbitral.

We, P. Q. in R. R. S. in T. and T.
U. in V. three of the arbiters, (the other
being absent) mutually chosen by A.
B. of C. C. D. of E. F. G. of H.
and

and J. K. of L. and A. M. relict of W. K. late of L. for any right or interest she has in the commony after-mentioned, to decide and determine certain claims and questions betwixt them, relating to the commony of U. and to divide the said commony, in consequence of a submission dated the — day of — and — and — days of — last, and of our former minutes thereon, dated the — day of — also last. Having met upon the said commony upon the — day of — current, and called before us J. R. in G. and J. B. in N. the measurers authorised and appointed to survey the said common, did receive their report upon oath, and proceeded, along with the said measurers, and inspected the several proportions of the commony, contained in the particulars of the report, we the arbiters

arbiters did then proceed to value the several proportions, in order to a division, having before us an extract from the collector of the cess of the valuation of the several lands claiming right of the said commonty. And we the said arbiters, having considered the annual value of the said commonty, and fixed a sum for a yearly rent thereof, and proportioned the same among the several valuations, did proceed, in terms thereof, to divide the said common in manner following, viz. We made a pit twelve ells eastward of that part of the burn, at the march of L. where the march-dike, just now building betwixt it and A. terminates in the said burn; and from that pit above described, along a row of other pits northward, in a straight line, to a great cairn in the said lands; and another line from the said

T

cairn

cairn westward, in a straight line to the march of E. according to pits made along that line; which two lines above described, we have constituted and established, as marches bounding that part of the common, which is to appertain to L. and that the aforesaid line from the march of E. to the cairn, and another line from the cairn northward to the march between the commony and C. and along the march of C. to a pit a little way beyond a round heathy know, and a third line from the foresaid pit westward to the march of E. shall bound and be the marches of that part which shall belong to E. and from the last described line along the march betwixt the commony and C. northward to the corner of the W. of C. and from that corner in a diagonal line thro' the small square piece of ground to the
march.

march-stone in the ford of — ; the burn agreeable to pits there made, shall bound the proportion of H. upon the east side, the north end of the proportion of E. being the boundary upon the south, but the march-dike between these two shares to stand in the ground of H. And, lastly, that the small piece of ground cut off by the diagonal line, and on the east side thereof, at the corner of the W. of C. together with that proportion of land lying on the east side of the line above mentioned, from the burn at the march of L. to the cairn, and from thence northward to the march of C. shall compose the proportion assigned to C. And we the said arbiters having caused dig pits, and set up props along the lines above described, do discern and ordain these lines to be the respective marches betwixt the foresaid lands

of C. L. E. and H. and that the several proportions of the foresaid commony, allotted, as above mentioned, to each of the said grounds, shall appertain and belong to them in all time coming, to be used, laboured, and manured by the several heritors, or their tenants, without any molestation. And further, we decern and ordain the stones of the cairn to belong in common to the foresaid four farms, but without burdening the shares assigned to any of the farms, with roads to accommodate any of the other shares, excepting where the stones are to build march-dikes betwixt the several proportions of the said commony. Moreover, in case any marl shall be found in any of the mosses in any part of the said commony, we the said arbiters decern and ordain that the said marl shall belong in common to the heritors

ritors of the farms having right of commonty, conform to their respective valuations ; and that the marl drains shall be wrought, and the marl cast at the common expence ; but that no heritor shall be entitled to a share of the marl, unless he pay the proportion of the foresaid expence, agreeable to the valuation of his property lands ; and that every heritor shall have free access to the marl pits and cart roads allowed him for leading the same, without any fee or exaction to be made by the heritor in whose proportion the marl is found. And, lastly, we the said arbiters, being ripely and well advised of the whole particulars above mentioned, and of the value of the said commonty, and extent of the property lands having right therein ; and having God and a good conscience before our eyes,

do pronounce and give forth this our final sentence, and decreet-arbitral, in the terms particularly above set forth; and decern and ordain each of the said parties submitters to obtemper and fulfil the same, under the penalty of twenty pounds Sterling, to be paid by any of the parties failing to the parties observing, or willing to observe the same, in case of failzie, attour performance: And ordain this our decreet-arbitral, with the said submission, to be registered in terms of the clause of registration therein contained, that letters of horning, and all other legal execution may be directed hereupon. In witness, &c.

Lands lying *run-rig* may be also divided. This process, by act of parliament 1695, c. 23. is appointed to be carried on before the sheriffs, stewarts, or justices of
the

the peace of the severall shires or stewarts where the lands lie ; and the form of proceeding is the same as in that of division of commonty. By the above mentioned act of parliament, the judges are directed to have special regard to the mansion-houses of the respective heritors, and to adjudge them, in the division, such parts as shall be most commodious to their respective mansion-houses and policy. Borough and incorporate acres are excepted from this act.—The division of lands lying *run-rig* may also be made by submission ; the form of which, and of the decret-arbitral thereon, may be easily gathered from the foregoing examples.

T I T.

T I T. VIH.

Contracts.

A Contract is the voluntary agreement of two or more persons, whereby something is to be given or performed, on the one part, for a valuable consideration, either present or future, on the other part. Consent of parties is implied : But it is excluded, by error in the essentials of the contract ; for, in such case, the party does not properly contract,
but

but is deceived : And this may be applied to contracts, which take their rise from fraud or imposition.—Consent is also excluded, where the entering into the contract is the effect of force or fear ; for, in this case, the will does not consent. It is also necessary to render contracts effectual, that the agreement of parties be not contrary to law. Thus, on a contract of sale of smuggled goods, no action lies against the vender for not delivery, if the buyer know the goods were run ; nor when commissioned and delivered, against the buyer for the price, if between two subjects of this realm. But it has been found, that action did lie for the price, at the instance of a foreign merchant ; and there are a number of decisions in favour of this distinction between a native and a foreigner. This general principle

principle of the subject of contracts being consonant to law, cannot, however, be extended to strike against marriage-settlements, or deeds to take effect after the death of the granter, as being contrary to the consuetudinary law of terce, courtesy, provision to children, and that of dissolution of marriage within year and day : The terce being excluded by a special provision, unless this provision expressly give a right to it over and above the terce ; and the disputes that might arise from dissolution of marriages within year and day, being prevented by a clause in marriage-contracts, that the interest of husband and wife shall continue, though the marriage should be dissolved in that time without a living child. In all these cases, the *pactio hominum tollit pactiorem legis,*

legis, as observed by Spottiswood in treating of marriage-contracts.

Under the general denomination of contracts, several of the foregoing writings may be considered as falling ; but it was thought proper to give such as had also a special denomination by themselves, to avoid prolixity. The agreements used among mankind are indeed so various, that it would be in vain to think of giving examples of all the contracts that may be entered into : But, from a few examples, the formal part of a contract may be learned ; the substantial part must depend entirely upon the transaction between the parties. The utmost that examples can do, is to suggest a few things, and to lead to the arrangement of the clauses ; for it would be impossible to give examples directly

directly calculated for every case that may occur in practice.

Contract of Mining.

It is contracted, agreed, and ended betwixt A. B. of C. on the one part, and C. D. in E. F. G. in H. J. K. in L. M. N. in O. P. Q. in R. and S. T. in U. mining adventurers, on the other part, in manner following; that is to say, the said A. B. does hereby grant full power and liberty to the said mining adventurers, to break ground upon any part of the lands of ——— lying in the parish of ——— and shire of ——— and to dig therein for mines and minerals, and particularly lead, and

to

FH

MVSEVM
BRITANNICVM

to turn out the same for their own use and behoof; to build all manner of houses, mills, or smelting houses and engines, which may be judged necessary to the working thereof; to cut and lead whatever peats and turfs the said work, or those employed at it, may require; and to make levels or aqueducts through any part of the said lands; and that for the space of fifty years from and after the — day of — next, which is hereby declared to be their entry thereto: And the said A. B. does hereby warrant the above stipulation at all hands. For the which causes, and on the other part, the said mining adventurers *do* hereby *bind* and *oblige* themselves, their heirs and successors, to give and deliver to the said A. B. during the first ten years of the fore-said space, one tenth part of all the ore

U

or

or metal that shall be raised from said mines, clean dressed or washed, delivered at the mines upon the ——— day of ——— yearly, free of all expences ; and during the second ten years one-eighth of all the ore or metal as above ; and during the last thirty years one-seventh of all the ore or metal as above. But, in case the said adventurers shall build mills and smelt, they oblige themselves and their foresaids to deliver the said duty, or rental shares, in smelted, or pig-metal. And further, the said adventurers bind and oblige themselves to pay to the present tenant of the said lands of ——— whatever surface damages he may have a just title to demand, to be ascertained by the arbitration of neutral men : And the said adventurers do hereby bind and oblige themselves and their foresaids, to keep four men

con-

constantly at work, from and after their entry thereto, unless some unforeseen accident or calamity fall out ; and if they shall leave off working for more than the space of four kalendar months together, the work shall be understood to be relinquished : And the present contract shall be understood to be at an end, and absolutely void and null, without any warning or process of law whatever ; it being expressly conditioned and declared, that the said adventurers shall have full power and liberty to employ whatever greater number of miners or workmen they may think proper ; and also to abandon the said work altogether, at any time they please, without being liable to the said A. B. in any damages whatever. And in case this contract shall continue in force for the said whole space of fifty years, the adven-

turers hereby oblige themselves and their forefaids, to remove from the said work without any warning: And both parties bind and oblige themselves to perform their respective parts of the premisses to each other, under the penalty of ——— pounds Sterling, to be paid by the party failing to the party performing or willing to perform, over and above performance. (a) Consenting to the registration, &c.

N. Gold and silver mines are understood to be reserved by the crown, unless they are specially conveyed: But every proprietor is entitled to a grant of the mines within his own lands, with the burden of delivering to the crown a tenth of what shall be brought up.

The

The following was the form of an agreement among adventurers themselves, and might either proceed on a narrative of the foregoing contract, or be contained in the same paper with it, and come in at letter (*a*). In the first of these cases, it would be necessary, after narrating the foregoing contract, to add, ‘ And seeing, ‘ at the time of entering into the contract ‘ above narrated, it was agreed among the ‘ said mining adventurers, that they should ‘ enter into the contract underwritten for ‘ carrying the same into execution;— ‘ therefore it is hereby stipulated,’ &c. or, in the other case, it goes on thus :

‘ Moreover, it is hereby stipulated and ‘ agreed upon, among the said mining ‘ adventurers themselves; and each of ‘ them does hereby bind and oblige him-

‘ self, his heirs and successors, that he shall
‘ advance, and pay to the overseer, or
‘ person to whom the management of the
‘ work shall be committed, or to the per-
‘ son who shall be appointed the compa-
‘ ny’s cashier, the particular sum annexed
‘ to his subscription; and that either at
‘ once, when the same shall be demanded,
‘ or in different calls, as shall be judged
‘ most proper; and that each subscriber
‘ shall be entitled to a share of the profits
‘ arising from the said work, in propor-
‘ tion, and corresponding to the sum by
‘ him subscribed and paid up: And de-
‘ claring always, as it is hereby expressly
‘ provided and declared, that if any shall
‘ be deficient, and fail in payment of his
‘ subscription, or call thereof, for the space
‘ of three months after the same is de-
‘ manded, it shall be optional to a majori-
‘ rity

‘ rity of the other subscribers, either to
‘ strike him out of the present contract al-
‘ together, or to continue him upon pay-
‘ ment of his subscription ; it being like-
‘ wise declared, that, if he is struck out,
‘ he shall forfeit whatever part of his sub-
‘ scription he may have formerly advan-
‘ ced ; declaring hereby, that no partner
‘ subscriber shall have it in his power to
‘ sell, or dispose of his share of said mines,
‘ till he make an offer thereof first to the
‘ company ; and if they shall not incline
‘ to purchase the share of such person, he
‘ shall only have liberty to sell the same to
‘ such person as shall be agreeable to a ma-
‘ jority of the said company : And it is
‘ hereby agreed, that, if any of the sub-
‘ scribers shall incline to withdraw them-
‘ selves from said company, they are here-
‘ by declared to have liberty so to do, and
‘ so

‘ so soon as his or their subscription-mo-
‘ ney is exhausted ; they being always o-
‘ bliged to give the company legal notice
‘ thereof forty days previous thereto.
‘ And, lastly, it is agreed by the said
‘ subscribers, that they shall meet at —
‘ and ——— yearly, viz. the first meet-
‘ ing to be at ——— the ——— day of
‘ ——— next to come, and the next at
‘ ——— the ——— day of ——— in the year
‘ following ; and so forth during the sub-
‘ sistence hereof, for taking into conside-
‘ ration the state of the concern, and gi-
‘ ving directions, and making regulations
‘ respecting it. But it is declared, that if
‘ it shall be at any time inconvenient for
‘ any subscriber to attend, he may appoint
‘ any other subscriber proxy for him, by
‘ whose deeds and actings he shall be
‘ bound ; and whatever shall be done and
‘ acted

‘acted at said meetings by the majority
‘of subscribers and proxies then present,
‘the same shall be binding on all concer-
‘ned: And each subscriber binds and o-
‘bliges himself, and his forefairs, to per-
‘form his part of the premisses, under
‘the penalty of one-fifth of the sum by
‘him subscribed. And all parties con-
‘sent to the registration,’ &c. (or, if this
is a separate contract, say, ‘and con-
‘sent,’ &c.)

Contract of Wood.

It is contracted, agreed, and ended
betwixt the parties following, viz. A. B.
of C. heritable proprietor of the lands and
others

others after-mentioned, on the one part, and C. D. in E. on the other part, in the manner following ; that is to say, the said A. B. hath sold and disposed, and hereby sells and disposes from him, his heirs and successors, to and in favours of the said C. D. his heirs, executors, or assignees, the whole growing timber and under-wood presently upon the farm of B. C. and A. all belonging to the said A. B. lying in the parish of — and shire of — with the whole bark, bulk, and boughs thereof (*a*): As also, the whole timber and barks cut and peeled therein by J. K. the present manager, and those employed by him, since the — day of — last, with the whole moneys or accounts arisen, or to arise therefrom, paid or unpaid ; together with all the present manufacturing tools, bags, baskets, and

and others belonging to the said A. B. in the hands and custody of the said J. K. or others employed by him, at the price the said A. B. paid for the same himself (*b*); with full power to the said C. D. and his forefaids, to peel, cut, manufacture, lead, and away take, the said whole cut, and growing timber, bark, and boughs thereof, within and upon the said lands of B. C. and A. and pertinents thereof, sell, use, and dispose thereupon, at their pleasure, with free ingress, egress, and regress, to the said wood, land, grounds for labourers, horses, carts, and carriages; for selling, cutting, and taking away of the said timber and bark, by the most convenient ways they can to and from the public highways, and for shipping at ——— so far as the said A. B. has right himself, without interruption; with

with liberty to dig and make coal-pits, and to erect bark, and coal-houses, and shades on the most convenient places of the said lands, and to remove the same at pleasure ; with liberty of sod and earth for covering the said houses, pits, and shades ; and that for the space of seven years from and after the — day of — last, one thousand, &c. years, which is hereby declared to have been their entry thereto, notwithstanding the date hereof ; which disposition the said A. B. binds and obliges himself, and his forefaids, to warrant at all hands (c). For which causes, and on the other part, the said C. D. and F. G. in H. as his cautioner, bind and oblige themselves, conjunctly and severally, their heirs, executors and successors, to make payment to the said A. B. his heirs or
affig.

assignees, of the sum of L. 1200 Sterling,
and that at and against the term of —
with L. 240 money foresaid of penalty
and liquidate expences in case of failzie ;
together also with the due and ordinary
interest of the said principal sum, from
and after the said term of payment, du-
ring the not payment thereof (*d*) : As
also, to cause cut, and carry on the ma-
nagement, manufacturing, and sale of the
said wood, in the usual and proper sea-
sons, and in regular hags, clearing each
year's hag towards the fall of the season,
of the whole cut timber, bramble, and
coat wood ; and, in all respects, to act in
such a manner as may tend least to the
prejudice of the said proprietor or his te-
nants, so far as the nature of the work
will admit, and to clear the whole of the
said woodland grounds against the —

day of — one thousand seven hundred, &c. years, which is declared to be the expiry of this contract; at which term the said purchaser and cautioner oblige themselves to flit and remove from the said wood-lands and others, and to leave the same void and red, without any warning, or process of removing. And it is hereby further declared, that, in case they or their foresaids shall fail to carry off the whole of the foresaid timber against the expiry of the contract, then it shall be lawful to, and in the power of the said proprietor or his foresaids, to intromit with and dispose of for his own behoof, all such timber as shall then remain on the said lands, without any process of law, declarator, or action whatever: And parties bind and oblige themselves and their foresaids, to perform, implement, and

and fulfil their respective parts of the premises to each other, under the penalty of L. 100 Sterling, to be paid by the party failing to the party observing, or willing to observe the same, in case of failzie, by and attour performance. *And consenting to the registration, &c.*

If, as is ofteneft the case, there has been no cutting, or any manufacturing tools, &c. belonging to the proprietor, leave out from (a) to (b).

Sometimes a bond is taken for the price separately, in which case, the counterpart of the contract begins thus: ‘ For
‘ which causes, and on the other part, the
‘ said C. D. and F. G. in H. as his cautioner, have, of this date, granted bond
‘ to the said A. B. for the sum of L. 1200

X 2

‘ payable

‘ payable ——— with interest and penal.
‘ ty ; *and bind and oblige* themselves, con-
‘ junctly and severally, their heirs, execu-
‘ tors, and successors, to cause cut and car-
‘ ry,’ &c. and leave out what is between
(c) and (d); and, before the clause of
registration, this clause of relief may be
insert: ‘ And the said C. D. binds and
‘ obliges him to free, relieve, harmless
‘ and skaithless keep the said F. G. of his
‘ said cautionry, and of all cost, skaith,
‘ damages and expence he may sustain
‘ therethrough, any manner of way.’—If
the bond is by the principal and the cau-
tioner as such, the like clause of relief
may be insert in the end of the bond:
But if a conjunct bond by them as co-
principals, a separate bond of relief may
be probably thought necessary. If the
wood is of small extent, and the term of
payment

payment soon after the entry to the cutting, a bill may be taken and mentioned thus: 'For, &c. granted their conjunct
'accepted bill to the said A. B. payable
'—— and bind and oblige,' &c. and the cautioner will think himself abundantly safe by a missive from the principal for his relief.

*Contract of Co-partnery between two
Merchants.*

*It is contracted and agreed betwixt the
parties following, viz. A. B. merchant in
C. on the one part, and C. D. merchant
there, on the other part, in manner after-*

mentioned ; *that is to say*, the said parties, in consideration of the mutual trust and confidence which they repose in one another, *have joined*, and *do* hereby join themselves in company and copartnership together, for carrying on and managing the trade and business of merchandize, in manner, and on the terms and conditions after set down ; and that for the space of ——— years, from and after the ——— day of ——— last, which is hereby declared to have been the commencement of this copartnery, notwithstanding the date hereof. And for the better carrying on the said copartnery, the said parties did then, and do hereby agree, that the capital free stock of the said A. B. in goods and money, trade and merchandize, did amount, and was equivalent to L. ——— Sterling, on the said ——— day of ——— and the capital

capital free stock of the said C. D. to L. ——— Sterling, at the said ——— day of ——— amounting together to the sum of L. ——— pounds Sterling; which sum they did and do agree shall be the capital stock of this copartnery; which capital stock they the said parties mutually oblige themselves to keep and continue in the said copartnery, and apply for the common benefit thereof, without uplifting or disposing of any part of the same for any other purpose; and which copartnery and joint trade shall be carried on, and the books and whole correspondence kept in the name, and under the the firm of *B—— and D——*; and all bonds, bills, contracts, missives, and other writs thereto belonging, shall be subscribed by the common signature *B—— and D——*: And to ascertain the firm of
each

each partner, their manner of saying shall be thus, viz. by the said A. B. written with the said A. B.'s hand, B. and D. and by the said C. D. written by C. D.'s hand, B. and D. which respective firms are hereby declared to be inserted with the hand writing of the said respective partners, and hereby declared to be the firm and signature of the said copartnery. And the said parties solemnly engage to adhibit the company's firm and signature to no bonds, bills, contracts, missives, or other writs, except what relate to the company's affairs allenarly; and also to contract no debt or debts for the company, without the consent of each other. As also, to warrand and defend the said joint stock, and the whole stock of the copartnery, hereafter to be free and safe from all costs, damages, and expences that may arise.

arise from any diligence, arrestments, poindings, or other distresses, for any particular private debt of their own, with which the said copartnery is to have no manner of concern; and that the said partners shall not, during the copartnery, do or act any thing, or come under any private separate engagements or obligations that may bring on, or occasion any cost, damages, expences, arrestments, poindings, or others, to disquiet or disturb the said joint trade or copartnery; and it is hereby agreed, that the said copartnery trade and business shall be carried on in the shop presently possessed by the saids A. B. and C. D. or in any other shop to be taken by them within the said ——— during the subsistence of the said copartnery. And it is also hereby agreed, that, after payment of the rent and other expences,

pences, the profits arising from the said copartnery shall be shared and divided between the said parties, in proportion to the respective sums foresaid of free stock; and declaring always, that whatever loss or losses may happen to be sustained in the said trade, shall be born in the same proportion. And, accordingly, the said parties bind and oblige them to relieve each other of all such loss or losses proportionally, conform to their respective shares of the said capital stock: *And* for carrying on and managing the said copartnery and joint trade, to the mutual benefit and advantage of both parties, the saids A. B. and C. D. faithfully and reciprocally *bind* and *oblige* themselves, and their heirs, to the faithful observance and performance of all and every one of the articles, conditions, and obligations, not only before,
but

but those after set down, viz. That they shall and will employ themselves, diligently and carefully, to the utmost of their power, skill, and knowledge, in the management, oversight, and direction of the said joint trade; and carefully attend to the shop and warehouse wherein the same shall be carried on; and to impart and communicate their best counsel and advice to each other for advancing thereof, and shall not conceal any thing that they think may be helpful thereto: That none of them shall purchase or buy any goods for the use of the copartnery, contrary to the advice of his partner, or without his consent: That neither of them shall sell goods to any person in trust, contrary to the advice given by his partner, at the time of making the sale; and, if any such sale be so made, such
sale

sale shall be upon the risk of the party who makes the same alienably, and the value thereof shall be made good to the copartnery by the seller, within twelve months after such sale, or shall then be charged to his particular accompt: That the said partners shall keep, or cause to be kept, just, exact, and regular books and accompts, in which shall be faithfully and timeously entered all actions and transactions in buying and selling, paying out, and receiving money, and exact copies made of all letters of importance concerning the affairs of the copartnery: That the cash of the copartnery shall be kept, and the money taken in payments made by the said partners by turns, for the space of — each at a time; and an exact accompt of receipts and payments shall be given by the said partner, and the same entered

entered in the copartnery books : That all apprentices shall only be taken and indented with and by the joint consent of the partners ; but, when either partner shall give bed and board to the apprentice, then the apprentice-fees and ordinary compliments shall allennarly belong to that partner, and not be considered as any part of the profits of the copartnery ; as also, that it shall always be in the power of either of the said parties, to dissolve this copartnership at the end of — upon giving — months previous notice ; and then, as also at the ish of this contract, or upon the decease of either of the parties, the books of the company shall be balanced, and a true state of their affairs made out ; and such of the goods as are on hand shall be with all convenient speed converted into cash, and the pro-

Y

ceeds

ceeds thereof applied to the extinction of the copartnery debts, and the profit or loss divided between the said parties, or their heirs, in the proportion foresaid; or, in the event of this contract being dissolved at the said —, or at the end of the said — years, it shall be in the power of either of the said partners, or of the survivor, in case of the dissolution thereof by the death of either of the said parties, to draw the whole stock thereof at — below the prime cost, the said sum to be payable within — months thereafter, and the said partner accepting of the said stock, shall receive from the other partner, or, in case of the dissolution thereof by the death of either of the said parties, the surviving partner shall receive from the heirs of the deceased partner, an assignation to all debts and sums of money that shall

shall then be due to the said copartnery; and the said partner or survivor receiving and accepting such assignation, shall be bound and obliged to free and relieve the other partner, or the heirs of the deceased partner, of all the debts and sums of money due by the copartnery at the dissolution thereof; such partner or survivor being always obliged, as he hereby in the said event obliges himself, his heirs and successors, to apply the said sums when due and recovered, in the first place, towards extinction of the debts due by the copartnery, and the balance of profit or loss to be proportioned in manner foresaid, betwixt the said parties and their foresaids; the said partner or survivor being obliged to account to the other party at the end of twelve months; and, in case any of the said debts shall then be outstanding,

the same shall be exposed to public sale, and the proceeds divided in the proportion foresaid. And further, it shall be lawful to the said partner or survivor, accepting of the said stock and paying as afore said, to retain and use the firm and signature of the said copartnery, ay and while he recover all the debts due to them. And further, that whatever other rules shall be thought useful for the better regulating and managing the affairs of the copartnery, and shall be insert in their day-book, and signed by the said parties, shall be equally binding on them as if they were herein specially insert.

(a) And to the faithful observance and performance of every one of these articles, obligations, and conditions, and executing the present copartnery agreement, in its true and genuine sense, and purports,

the

the faids A. B. and C. D. each for himself, binds and obliges him, his heirs and succeffors, *hinc inde* to the other, under the penalty of ——— Sterling, to be paid by the party failing to the party observing, or willing thereto, by and attour performance. Consenting to the registration, &c.

(a) There is generally insert in these long papers a clause obliging the parties to submit any differences may occur, which may come in at letter (a) and be thus,
' And the said parties agree, in case any
' dispute shall arise betwixt them concerning the said copartnery, or the
' meaning and intention of these presents,
' or of any rules to be insert in the day-book, and signed by the parties as a-
' foresaid, to submit the same to two ar-

'biters to be mutually chosen by the said
 'parties, or, in case of their variance in
 'opinion, to any overfman to be named
 'by the said arbiters, whose determina-
 'tion shall be final.'

*Contract of Copartnery betwixt a Fa-
 ther and his Son, the Father re-
 ceiving his Son into partnership,
 and allowing him a share of his
 stock in trade.*

It is contracted and agreed betwixt
 A. B. merchant in C. on the one part,
 and C. B. there, his eldest lawful son, on
 the other part, in manner following, that

is

is to say, the said A. B. has admitted and received, and by these presents admits and receives, the said C. B. to be copartner in company with him, in carrying on the trade and business of merchandise, which the said A. B. presently followeth and practiseth : And, in consideration of the mutual trust and confidence, which the said parties repose in one another, they have joined, and do hereby join themselves in company and copartnership to one another, for carrying on the said trade : And that, for the space of five years, or shorter, in manner, and on the terms and conditions after set down, from and after the — day of — last, which is hereby declared to have been the time of the commencement of the said copartnery, notwithstanding of the date hereof ; and for the better carrying on of the said copartnery,

partnery, the said parties did then, and do hereby agree, that the capital free stock which the said A. B. was possessed of in trade and merchandise, did, on the said — day of — extend and amount to the sum of — Sterling money, which sum they did, and do agree shall be the capital stock of this copartnery. And whereof the said A. B. hereby assigns the sum of — Sterling, to the said C. B. his son, which he accepts of as his share of the said capital stock; which capital stock, they the said parties mutually oblige themselves to keep and continue in the said copartnery, &c. And which copartnery and joint trade shall be carried on, and the books and whole correspondence kept in name of *A. B. and Son*; and all bonds, &c. shall be subscribed by the common signature *A. B. and Son*; and

and to ascertain, &c. And the said parties solemnly engage to adhibit, &c. to no bonds, &c. as also to contract no debts, &c. And that the partners shall not, during the said copartnery, do or act, &c. And it is hereby agreed, that the said copartnery trade shall be carried on in the shop, &c. And it is also hereby agreed that the profits arising from the said joint trade and copartnery, shall be shared and divided betwixt the said parties as follows, viz. either in the option of the said A. B. five sixth parts thereof shall belong to and be drawn by the said A. B. and one sixth part thereof by the said C. B. or also in the option of the said A. B. the whole profits thereof shall belong to, and be drawn by the said A. B. in which case he obliges him to pay to the said C. B. the several sums of money after specified, during the continuance of their copartnership,

nership, viz. for the first year the sum of L. 30, for the second year the sum of L. 40, for the third year the sum of L. 50, and all remaining years of the copartnery L. 60, all Sterling, which several sums the said C. B. accepts of in full of his 6th share of the profits that may arise from the copartnery trade; declaring always that the one sixth part of whatever loss or losses may happen to be sustained in the said trade, the same shall fall upon and be born by the said C. B. and the other $\frac{5}{6}$ th parts of the said loss or losses shall be born by and fall upon the said A. B. And accordingly, the said parties bind and oblige themselves to relieve each other of all such loss or losses proportionally, conform to their respective shares of the said capital stock; and for carrying on, &c. reciprocally bind, &c. to the faithful observance,

servance, &c. of the articles, &c. not only before, but these after set down, viz. That they shall and will employ themselves diligently, &c. That none of them shall purchase or buy any goods for the use of the copartnery, contrary to the advice of his partner, or without his consent: That neither of them shall sell goods to any persons in trust, &c.: That the said C. B. shall keep just, exact, and regular books and accounts, in which he shall faithfully and timeously enter all actions and transactions, in buying and selling, paying, and receiving money, and make exact copies of all letters of importance concerning the affairs of the copartnery: That the cash of the copartnery shall be kept by the said A. B. and by him all money shall be taken in, and payments made, and an exact account

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count of receipts and payments shall be given by him to the said C. B. who shall enter the same in the copartnery books : That the said C. B. shall take up none of the copartnery's cash for his own proper use, but at the sight of his said partner, and duly entering the same in the company's books, and charging it to his proper account ; and that he shall not exceed the sum of L. 30 Sterling in all for the space of one year : That all apprentices, &c. and also, that it shall always be lawful, and in the power of the said A. B. to dissolve the copartnery at the end of each year after the — day of — last ; and then, as also at the ish of this contract, or upon the decease of the said C. B. to draw the whole stock thereof, he giving the said C. B. or his heirs or assignees value in goods for L. — being
his

his share of the capital, and paying him or his forefaids what he may want of the forefaid annual fums, accepted as aforefaid, in lieu and place of his share of the profits, deducing always the faid C. B.'s share of the loss or losses as before noticed: And, at the same time, the faid C. B. or his forefaids, assigning to the faid A. B. all debts and fums of money that may be then due to the copartnery; and the faid A. B. shall then be bound and obliged to free and relieve the faid A. B. and his forefaids, of all the debts and fums of money due by the copartnery at the dissolution thereof. And further, it shall be lawful to the faid A. B. to retain and use the firm and signature of this copartnery ay and while he recover all the debts due to them. And further, in case of the decease of the faid A. B. during

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the standing of this copartnery, it shall be in the power of the heirs or assignees of the said A. B. to draw the whole stock of the copartnery in the same manner and upon the same conditions as is above agreed and condescended upon, in the case of the dissolution being made by the said A. B. himself, or at the ish of the contract or decease of the said C. B. And in order to enable the heirs or assignees of the said A. B. to recover the debts due to the copartnery, the said C. B. is hereby empowered to retain, and use the firm and signature of the copartnery, ay and while such debts due to them be recovered. And further, whatever rules, &c. and the said parties agree, that in case of any dispute &c. and to the faithful and punctual observance, &c. Registration, &c.

From

From the first example of a contract of copartnery given, it will be easy to form a contract, according to any agreement of parties, betwixt two persons possessed of considerable stock; and the last example will, with a small variation, answer for a clerk received by his master into a share of the business.

Contract of copartnery being founded on the reciprocal choice by the partners of one another, is not constituted in the case of co-heirs, &c. It is also understood that no partner can transfer his share to another person, where there is no special covenant with regard to the dissolution thereof by the death of any of the partners, or with regard to any power of dissolving the contract at any period by any of the parties, it is dissolved by the

renunciation or death of any one of them; but, lest this should give occasion to renouncing upon unfair views, or at a critical period, the law has provided that renunciation in these circumstances looses the other partners from their obligations to the partner so renouncing, while he is bound for the profit he may make by so doing, and the loss thereby arising to the company.

The general clause, declaring that all writings signed by the firm of the company shall be binding, will not be understood to entitle any partner to submit doubtful claims; no individual partner having power by law to bind the other partner in a submission.

Articles

Articles of roup of a Feu Tenement.

Having, in the other part of this work, been very full upon feu contracts and conveyances thereof, I shall here refer to what has been said thereon, and only add a form of articles of roup of a feu tenement, which is sometimes used.

Articles and conditions of the roup and sale of a house and yard at —, in the parish of —, and shire of —, lately possessed by —, feued from J. K. of —, superior thereof, extending in front — feet from north to south, and the yard at the back of said house, extending in
Z 3 length

length from west to east — feet,
and of breadth equal to the length
of the front of said house; to be ex-
posed to public roup and sale, in the
house of I. C. innkeeper in —,
upon the — day of —, with
the burden of the payment of the
yearly feu-duty, and performance of
the other prestations after mention-
ed, by A. B. proprietor of the said
tenement, in consequence of sundry
advertisements to that effect.

Primo. That during the space of half
an hour upon the watch of the judge to
the roup after named, the foresaid house
and yard are to be exposed to public
roup, and set up at the sum of L. —
before — hereby appointed judge
to the roup, and the person or persons
offering

offering that sum, or in case of higher offers being made, the person or persons making the highest offer at the expiry of the said half hour, shall be preferred to the purchase.

Secundo. In case of more offerers than one, every offerer after the first shall exceed the preceeding one in the sum of — Sterling.

Tertio. Each offerer shall subscribe his offer, and be thereby bound in terms of the above and following articles of roup, and consign in the hands of the clerk — of bidding money to be returned to all except the last.

Quarto. The purchasers entry to the said house and yard shall be at the term of
Whitsunday

Whitsunday next, and he shall be free of all public burdens affecting the same, preceeding that term.

Quinto. The person who shall be preferred to the said purchase shall, within ten days after the roup, find sufficient caution to the satisfaction of the said A. B. for payment of the sum at which he shall be preferred to the same, with annualrent thereof, from and after the term of — with one-fifth part more of penalty in case of failzie; and of the sum of five shillings Sterling of feu-duty, payable to the superior at the term of — yearly, and to implement to him the whole obligations and prestations incumbent on the feuer by a contract of feu of the said subjects, entered into betwixt the said I. K. and — dated —

Sexto.

Sexto. In case of more offerers than one, and that the person preferred to the purchase, as last and highest offerer, shall fail to find sufficient caution within the space aforesaid, he shall, in the option of the exposor, not only lose the benefit of the purchase, but also forfeit a fifth part of the price offered by him, which shall be paid to the said A. B. and the benefit thereof shall fall to the preceding offerer, who shall be bound to accept thereof at the price offered by him; and to find caution for payment of the said price to the said A. B. at the said term, and bearing interest and penalty, and for performance of the other prestations as above mentioned, within ten days after the failure of the last and highest offerer shall be intimated to him, otherwise shall forfeit and pay in the same manner and terms as
are

are stipulated in the event of the failure of the last and highest offerer, and so backwards through the whole course of the offerers, until these articles shall be fully implemented.

Septimo. Upon the purchaser's finding caution in manner above mentioned, the said A. B. binds and obliges him to make and grant, in favour of the purchaser, a disposition to the said tenement, containing procuratory of resignation, and precept of feisin, with the other usual and necessary clauses, and to warrant the same at all hands.

Ultimo. In case any question or difference arise concerning the said roup, and the execution of these articles, either betwixt the offerers themselves, or betwixt the

the

the purchaser and exposer, the same shall be instantly determined by the said ——— judge to the roup; whose determination adjected hereto shall be final and binding on all parties; and the last and highest offerer shall enact, bind, and oblige himself to perform the whole articles of roup incumbent on him, under the penalty of ——— attour performance. And the said A. B. and the several offerers subscribing their offers, consent to the registration hereof, minutes of roup, and enactment to follow hereupon, in the books of council and session, &c.

F I N I S.

A P P E N D I X.

NOTORIAL INSTRUMENTS,

CONNECTED WITH

FORMS OF WRITINGS,

A N D

SUPPLEMENT THERETO;

AND A FEW OTHERS,

I N C L U D I N G

Instruments of Protest upon Bills; Instru-
ments of Seifine upon Feu Contracts, &c.;
and all or most of the lesser Instruments.

By ANTHONY MACMILLAN.

EDINBURGH:

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M.DCC.LXXXVII.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

ALPHABETICAL INSTRUMENTS

CONNECTED WITH

THE ARTS OF WRITING

AND

THE ELEMENTS THEREOF

AND A FEW OTHERS

INCLUDING

THE ART OF WRITING IN THE HAND

AND THE ART OF WRITING IN THE FINGER

AND THE ART OF WRITING IN THE FOOT

AND THE ART OF WRITING IN THE EYE

AND THE ART OF WRITING IN THE EAR

AND THE ART OF WRITING IN THE NOSE

AND THE ART OF WRITING IN THE MOUTH

AND THE ART OF WRITING IN THE THROAT

AND THE ART OF WRITING IN THE LUNGS

AND THE ART OF WRITING IN THE STOMACH

AND THE ART OF WRITING IN THE LIVER

AND THE ART OF WRITING IN THE SPLEEN

AND THE ART OF WRITING IN THE PANCREAS

AND THE ART OF WRITING IN THE GALLBLADDER

AND THE ART OF WRITING IN THE BILE

AND THE ART OF WRITING IN THE URINE

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A P P E N D I X.

A P P E N D I X.

AS ships of the largest size come under the denomination of moveables, a Disposition thereof, or, as it is commonly termed, *A Vendition*, will differ in little from a disposition of any other moveable article.

Vendition of a Ship.

Know all men by these presents, That
I A. B. — in C. owner of the ship
A a called

called —, for a certain sum of money, instantly advanced and paid to me by C. D. — in E. whereof I grant the receipt, renouncing all objections to the contrary ; *have sold, alienated, and disposed*, as I hereby *sell, alienate, dispose, assign*, and *make over* to, and in favour of, the said C. D. his heirs, executors, or assignees, *all and whole* the foresaid ship, called —, presently lying in the harbour of —, with her masts, sails, anchors, cables, float-boat, and other apparelling and pertinents ; with all right or interest I have or can pretend thereto : *Surrogating* and *substituting* the said C. D. in my full right, title, and place of the premisses ; with power to him to enter to the possession thereof, sell, use, and dispose thereupon ; and generally every other thing there.

thereanent to do, that I could have done before granting hereof ; which vendition I bind and oblige me, my heirs and successors, to warrant to be good, valid, and sufficient ; and the said ship to be free, safe, and sure, to the said C. D. and his forefaids, in all seas, waters, havens, harbours, roads, and parts, of and from all former venditions, stays, arrestments, charges, claims, or incumbrances, at all hands, and against all deadly, as law will. *And I consent, &c. Registration, &c.*

It would occur, that, if the seller cannot give possession *propriis manibus*, the vendition ought to contain a precept of possession ; which will be the same, *mutatis mutandis*, with a precept of possession in a disposition of move-

ables. The symbols of possession are,
' The helmpin, best anchor, ring, oar
' of the float-boat, and a piece of the
' cable, in the disponee's hands, and
' the main-mast, and one of the fails
' in his arms.' This deed is completed
by an *instrument of vendition*.

Contract for building a Sloop.

It is contracted, agreed, and ended,
betwixt the parties following, viz.
A. B. assistant-solicitor to the custom-
house, as having power to the effect
underwritten, from the Honourable the
Commissioners of his Majesty's Cus-
toms in Scotland, *on the one part*, and
C. D. carpenter at —, *on the other*
part, in manner following: *That is to*
say,

say, the said C. D. binds and obliges him to rear up, build, and launch into the harbour of —, for the use of the said commissioners, for his Majesty's service; a good and sufficient sloop or vessel, of the dimensions and proportions underwritten; viz. her keel — feet long, her depth in the hold six feet, which will contain about forty tons, or thereby; and obliges him to furnish masts, yards, booms, rudder, and winlafs; and to do and perform all manner of carpenter's work necessary for the said sloop or vessel, and which is usual for ship-builders to do; and to furnish three anchors, rudder-work, chain-plates, and all other necessary iron-work: And the said C. D. binds and obliges him, that the whole planks to be made use of for building.

the said sloop, shall be good and well-seasoned oak-timber, (the decks only excepted), and of a thickness, length, and breadth, suitable to the dimensions of the said vessel; and he obliges him to have the said vessel sufficiently built and launched into the said harbour of —, before the first of June next to come; and the said C. D. obliges him to make the said vessel complete and right; and furnish the whole materials generally and particularly above mentioned, in good and sufficient worklike manner; at the sight, and to the satisfaction and approbation of any two indifferent honest knowing men, to be named by the said commissioners, or by the said A. B. in their name; and he obliges him to grant, subscribe, and deliver, to the said A. B. in name of the

the said commissioners, a sufficient and ample vendition, or bill of sale, of the said sloop, in common form ; and that so soon as the same is launched, and the price thereof underwritten completely paid. *For the which causes*, and *on the other part*, the said A. B. as having power from, and by order of, the said commissioners, has instantly made payment to the said C. D. of the sum of — pounds Sterling money, in part payment of the price of the said sloop, whereof the said C. D. hereby grants receipt, and discharges the said A. B. and the commissioners thereof, for ever ; and the said A. B. obliges him to make payment of the remainder of the price of the said sloop to the said C. D. at the rate of — Sterling *per* ton, for all carpenter's work, masts, yards,

yards, booms, rudder, and winlafs, being included, and at the rate of — Sterling money, for each hundred weight of the faid anchors, and other iron work; and that how ſoon and whenſoever the ſaid C. D. has completed and performed his part of the preſent contract. And *both parties* oblige themſelves to perform their parts of the premiſſes *hinc inde* to others, and the party failzier to pay to the party performer, or willing to obſerve, the ſum of — Sterling money of penalty and liquidate expences, by and attour performance of the premiſſes. (Registration, &c.).

Contract

*Contract of Copartnery betwixt the
Owners of a Sloop.*

*It is contracted, agreed, and finally ended, betwixt the parties following, viz. A. B. — at —, owner of $\frac{1}{8}$ th part of the sloop — late of —, now called the — of —, C. D. — there, owner of $\frac{1}{8}$ th part of the said sloop, F. G. marinér of H. owner of $\frac{4}{8}$ th parts, and J. K. mariner there, owner of the remaining $\frac{3}{8}$ th parts of the said sloop, with the pertinents, whereof the said F. G. is master, presently lying at —, in manner following : *That is to say*, the said parties *have agreed*, and hereby agree, to enter into a copartnery in the
use*

use of the said sloop; and *bind* and *oblige* themselves to advance whatever sums may be necessary for repairing and manning thereof; and to have and bear a proportional share of the profit and loss arising therefrom, in proportion to their several interests therein: *And* it is hereby declared, that the saids F. G. and A. B. shall be a quorum for all the purposes of the present copartnery; with power to them to freight the said sloop, as they shall think most proper, either in the coasting way or otherwise; and also with power to them to appoint and remove skippers or masters, as they shall see proper, and settle with them as often as they may think necessary; and generally every thing to, as fully as if the whole partners were present. *And*
parties,

parties, &c. (Clause of performance under a penalty, Registration, &c.).

Articles of Roup of the Brigantine
— of —.

Articles and conditions of the roup and sale of the Brigantine — of —, of which — is master, now lying in the harbour of —.

1^{mo}, That the said Brigantine —, with her masts, sails, anchors, cables, float-boat, and other apparelling and pertinents, with the benefit of the several apprentices bound to said Brigantine, in terms of their indentures, shall be exposed to sale, by way of public roup, within the house of —

vintner

vintner in ———, upon the ——— day of ——— years, between the hours of four and five afternoon, during the running of the sand in an half-hour glass.

2do, The first offerer for said Brigantine shall offer the sum of L. ——— Sterling at least, and every subsequent offerer shall exceed the former in the sum of L. ——— Sterling, and the last and highest offerer, at outrunning of the sand in the glass, shall be preferred to the purchase.

3tio, That each offerer shall subscribe his offer, and be thereby bound, in terms of the above and following articles, and consign in the hands of the clerk to the roup one guinea of bidding

bidding money ; which is to be returned to all except the last and highest offerer, and not to be accounted in any part of the price.

4^{to}, That the last and highest offerer, who shall be preferred to the purchase, shall, within ten days after the rroup, grant bond, with a sufficient cautioner, to be bound conjunctly and severally with him, for the price offered, to —————, for the behoof of the owners of said ———, and that against the ——— day of ——— next, with annualrent thereafter, and a fifth part of the said sum offered by him of penalty, in case of failure ; and the said purchaser shall thereupon receive from the said owners a disposition or vendition to the said Brigantine ———, and all other appertinents foresaid, containing all ordinary clauses.

B b

5^{to}

310, And, in case the said last and highest offerer, who shall be preferred to the purchase, shall fail to grant bond with a sufficient cautioner, within the foresaid space : *Then*, and in that case, he shall not only lose the benefit of the purchase, but also forfeit a fifth part of the price offered by him, which shall be paid to the said _____, for behoof foresaid, and the benefit of the purchase shall fall to the preceding offerer, who shall be bound to accept thereof, at the price offered by him, and to grant bond, with a sufficient cautioner, to be bound conjunctly and severally with him, in payment of the said price, to the said _____, for behoof foresaid, payable and bearing annualrent and penalty, as above mentioned, within ten days after the failure of the last and highest offerer shall be

be intimate to him, and shall thereupon receive a disposition or vendition, as aforesaid ; if otherwise, shall lose, forfeit, and pay, in the same manner and terms as is stipulated, in the event of the failure of the said last and highest offerer ; and so backwards, through the whole course of the preceding offerers. — is hereby appointed judge to the roup, and empowered to determine all differences that may arise thereanent, and to determine who is the last and highest offerer ; and to adjourn the roup, if he sees cause ; and the last and highest offerer shall enact himself to implement the whole articles of roup, as incumbent on him, under the penalty of L. — Sterling, attour performance ; and the said owners, and the several offerers, subscribing their offers, *consent* to the registra-

tion hereof, and of the enactment and minutes of roup to follow hereon, in the books of council and session, borough court-books of —, or any others competent, that letters of homing, on six days charge, and all other execution needful, in form as effects, may pass hereon. *And thereto they constitute* their procurators. *In witness* whereof, these presents (consisting of this and the preceding page, written upon stamped paper, by J. B. writer in —,) are subscribed by G. H. shipmaster in —, for himself, and J. K. merchant in L.; M. N. in O. for himself; and P. Q. in R. for himself, and as taking burden on him for the other owners of the said ship; at —, the — day of — — years; before these witnesses, — and —.

— witness. G. H. for self & J. K.
— witness. M. N.
P. Q. for self & other
owners.

Within the house of — vintner in
—, the — day of —,
— years. The articles of
roup being read to the company
convened, in presence of the judge,
and the glass being set up,

Compeared

R. S. in —, who offers —
pounds for the Brigantine —, in
terms of the articles of roup, R. S.

W. V. — in —, who offers, &c.

The judge, at the outrunning of
the sand in the glass, finds the said

B b 3

W. V.

W. V. the last and highest offerer at the said roup; and therefore prefers him to the purchase, at his last and highest offer, being ——— pounds Sterling; and the said W. V. *enacts, binds, and obliges* himself to implement the said articles of roup, as incumbent upon him, under the foresaid penalty of ——— Sterling, attour performance of the whole articles. *In witness* whereof, the judge and the said W. V. have signed these presents, written by ——— clerk to the roup. At —, the ——— day of ——— years, before these witnesses, ——— and ———.

—— witness.

W. V.

—— witness.

—— clerk.

Most part of the other maritime deeds are to be got printed ready for filling up.

Commission

Commission to a Person, as Commissioner, and to his Assessor, to attend the Convention of Royal Boroughs.

Know all men, by these presents,
That we _____ and
_____ bailies of the
borough of _____, with advice
and consent of the council of the said
borough, have nominated, constituted,
and ordained; likeas we, by the tenor
hereof, nominate, constitute, and ordain
_____ late pro-
vost of the said borough of
to be our very lawful, undoubted, and
irrevokable commissioner, and
Esq; Advocate, to be his
Assessor, to the effect underwritten,
giving, granting, and committing to our
said

said commissioner, and his assessor foresaid, jointly and severally, our very full, free, plain power, express bidding, mandament and charge, for us, and in our names, and upon our behalf, to meet and convene with the remanent commissioners of the free royal boroughs, in their general convention to be holden at the borough of Edinburgh, upon the day of with continuation; and there, in our name, and upon our behalf, to sit, treat, reason, vote, and conclude upon the heads and articles of the missive, or act of the general convention, dated the day of last, and upon all and sundry other things that shall happen to be proposed and treated upon at the said convention. *Firm and stable holding, and for to hold* all and whatsoever things
our

our said commissioner shall do in the premisses, in so far as shall concern the glory of God, the king's honour, and the welfare of this kingdom, and estate of boroughs therein. *And we testify and declare*, that the said

Esq; our commissioner
foresaid, and the said

Esq; be men fearing God, of the true Protestant religion, publicly professed and authorised by the laws of this kingdom, without suspicion on the contrary, and both burgeses of the said borough, expert in the common affairs of the borough; and that our said commissioner is standing upon the tax-roll, and bearing a part of the public burdens thereof, and who can tyne and win in all their affairs: *And moreover*, that he is a proprietor of land and houses holding burgage of the
borough

borough to the value of three thousand merks Scots, and upwards. *In testimony* whereof, we have caused these presents to be subscribed, by our common clerk his depute, and the seal of the corporation of the said borough to be affixed hereto, upon the first day of July one thousand seven hundred and eighty — years. Extracted forth of the town-court books of (on this and the two preceding pages) by me common clerk-depute subscribing.

A practice has lately been endeavoured to be introduced, of using tacks for some hundreds of years, in place of feu-contracts ; and has been strongly recommended by modern improvers ; the form of which tack is as follows :

Tack

*Tack for 999 Years, in place of a
Ffeu Contract.*

It is contracted, agreed, and ended,
between the parties following, viz.
A. B. Esq; of C. heritable proprietor
of the ground after mentioned, with
the pertinents, *on the one part*, and
D. E. — in F. *on the other part*, in
manner underwritten: *That is to say*,
the said A. B. for the yearly payment
of the tack-duty, and performance of
the other obligations and prestations
after insert, hereby *sets*, and in tack
lets and demits to, and in favour of the
said D. E. his heirs and assignees what-
soever, *all and whole* (describe the sub-
ject, with its boundings), all lying
within the lands of —, barony of
—, and shire of —, with the per-
tinents,

tinents, *and that* for all the days and space of *nine hundred and ninety-nine years* full and complete, from and after the term of Whitsunday —, which is hereby declared to be, and begin the said D. E. his entry to the premisses, notwithstanding of this date (a), by which tack the said A.B. binds and obliges him, his heirs and successors whatsoever, to warrant to be good, valid, and sufficient, to the said D. E. and his forefaids, at all hands, and against all deadly, as law will: *For the which causes, and on the other part*, the said D. E. binds and obliges him, his heirs and successors whatsoever, to make good and thankful payment to the said A. B. his heirs or assignees, of the sum of — shillings Sterling yearly, at two terms in the year, Martinmas and Whitsunday, by equal portions, beginning

ning the first term's payment thereof at the term of Martinmas —, for the half year immediately preceding, and the other half at Whitsunday thereafter; and so forth, termly and proportionally, during said space: (b) doubling the said tack-duty the first year of the entry of each heir or heirs thereto; also every assignee, or singular successor, paying three years tack-duty the first year of their entry, as aforesaid, as an acknowledgment for the change of the tenant. Further, giving suit and presence at all the head-courts to be holden by the said A. B. and his forefaids, or his or their bailies, within the said barony of —, so far as the same are not abolished by law; and to pay the clerk of court and baron-officer two shillings Scots each, at calling the suit-roll at Martinmas yearly; and also

to compear at all other courts to be holden there, when cited thereto, and to obey the statutes thereof, under the penalty of ——— yearly, as an unlaw or amerciament for each failure.

(c) With and under which conditions and provisions, to be performed by the said D. E. and his foresaids, these presents are granted, and no otherwise.

(d) *And both parties* (common clause of performance under a penalty, registration and testing clauses).

Variations.

The following clauses are sometimes inserted. Thus, at letter (a) ‘ With
‘ full power to the said D. E. and his
‘ foresaids, to use all manner of free
‘ trade and traffic within the said town or
‘ village,

'village, as freely as any other trader
'within the same are in use to do.' At
(b) 'With two Fasteneven hens yearly
'at the usual term of payment.' At
(c), 'And further, the said D. E. by
'these presents, binds and astricts
'himself, and his forefaids, to the
'corn-mill of the barony of —, —,
'commonly called the mill of —, —,
'and thereat to grind all their corn
'and malt, and to pay the multures
'used and wont, as the other inhabi-
'tants of the said town or village are
'in use to pay, and that they shall be
'liable in the like services as any o-
'ther tenant or inhabitant within the
'same are and shall be in use to per-
'form : *As also*, the said D. E. and his
'forefaids, shall be obliged to make
'payment of all public and parish
'burdens, impositions, and taxations,

‘ that are, or shall happen to be, im-
 ‘ posed upon the said piece of ground,
 ‘ with the pertinents, from and after
 ‘ the said term of Whitsunday —,
 ‘ during the currency of this tack.’

The following clauses are also some-
 times inserted, on the part of the mas-
 ter, at letter (d). ‘ And the said A. B.
 ‘ permits and gives full power and li-
 ‘ berty to the said D. E. and his fore-
 ‘ saids, to quarry stones upon any part
 ‘ of the said piece of ground, and also
 ‘ in ———, *gratis*, for building what
 ‘ houses he or they may have occasion
 ‘ for, within the subject foresaid hereby
 ‘ set ; which stones so to be quarried
 ‘ are to be led out of the said lands of
 ‘ ———, betwixt the middle of October
 ‘ and ——— day of April yearly ; and,
 ‘ in order to prevent the abuse of
 ‘ ground

ground as much as possible, the said
D. E. and his foresaids, oblige them-
selves to direct the road to and from
the quarry in the shortest manner, so
as to fall in with and join the gene-
ral road to and from the other quar-
ries occupied by the other tenants
and feuers: *And further*, power and
liberty is given to the said D. E.
by the said A. B. to cast peats in
the moss of ———, and have
spread ground thereon for the same,
for him and his foresaids, and o-
ther families allenaryly, conform to,
and in proportion to the other inha-
bitants of ———, who may have right
to the said moss, agreeable to valua-
tion. But always upon payment to
the tenant of ——— for the time being,
at the rate of ——— for each score of
loads of peats; the loads whereof
C c 3 such

‘ such as have been formerly, or used
‘ and wont ; and the said D. E. binds
‘ and obliges himself, and his forefairs,
‘ to direct the road in the nearest man-
‘ ner from the mofs, so as to fall in
‘ with the general road to and from
‘ the mofs occupied by the other te-
‘ nants and inhabitants.’

Observations.

As these tacks have not been taken notice of by any writer on the law, it may be proper to say a few words on the legality and expediency of them.

Tacks are, like other contracts, in their own nature, personal rights, and consequently ineffectual against singular successors (or purchasers). By

1449, c. 17. they were, for the encouragement of agriculture, declared effectual to the tacksmen, for the full time of their endurance, into whose hands soever the lands might come. To give written tacks the benefit of the statute, it must mention the tack-duty, which must not be elusory, it must be followed by possession, which supplies the place of symbolical possession by seifine : But, if the seller is divested of the property before the term of the tenant's entry, the tack is not good against a singular successor. If it is granted to perpetuity, it has not the benefit of the statute, though it may be good against the granter and his heirs. A term nearly equal to perpetuity is also liable to great objections. It is an incumbrance not to be known from searching the records. If
doubtful

doubtful laws ought to receive that interpretation which suits best with the intention of the lawgiver, there is little room to think the legislature had in view tacks of this kind at making the act 1449. If the practice upon this act is to have any weight, what weight is to be laid upon a practice not introduced till 300 years afterwards? In short, these tacks seem to rest solely upon the Decisions. ‘ A tack granted for the
‘ space of nineteen years, and after that
‘ for other nineteen years, and so forth,
‘ to the number of 1140 years, was
‘ found by the Court of Session to be
‘ ineffectual against the crown coming
‘ in right of the heritor, who was forfeited, although it might have been
‘ good against the heirs of the granter;
‘ and the term of endurance, by consent of the King’s counsel, was restricted.

‘stricted to nineteen years after Whit-
‘sunday 1765. This decision was re-
‘versed by the House of Lords, and
‘the tack sustained against the crown
‘for the whole term of endurance ;
‘Dec. 6. 1758, King’s Advocate *con-*
‘*tra* Frazer of Belladrum. The Lords
‘sustained a tack for 1260 years ; June
‘27. 1760, Irvine and Forsyth *contra*
‘Knox and Arnot. A tack granted
‘for two nineteen years, with an obli-
‘gation on the granter, his heirs and
‘successors, to renew it after that term,
‘from nineteen years to nineteen years,
‘in all time coming, upon the tenant’s
‘paying a certain sum as grassum at
‘each renewal, was found binding a-
‘gainst a singular successor in the
‘lands ; Nov. 17. 1763, Wight *contra*
‘Earl of Hopetoun ; Dictionary, Vol.
‘iii. p. 423. *voce* Tack.’ We find,
‘how.

however, under the words *Personal Objection*, in the said Dictionary, that the last mentioned tack was expressly excepted from the warrandice in the conveyance to the singular successor, and that the Lords ‘ found he was barred, ‘ *personal exceptione*, from objecting to ‘ the obligation in the lease, and that ‘ he was obliged to grant a new lease ‘ in terms thereof, and to renew the ‘ same at the expiry of every nineteen ‘ years, on payment of the stipulated ‘ grassum ; Fac. Coll. Nov. 16. 1763, ‘ Wight *contra* Earl of Hopeton.’— This last mentioned decision does not appear, therefore, of much weight. It seems rather to leave the matter doubtful. It is not at any rate a single decision, or two, that constitutes law, further than to bind the litigants in
that

that particular case, or these cases. It is only an uniform tract of decisions which are commonly considered as part of our customary law. In the case of a village, the right is understood by all parties to be equal to perpetuity, otherwise the question would be at an end, as no person would accept of the right considered in any other light. An assignation on stamped paper is necessary to the transmission of tacks, as well as of feu-contracts. When the tack is assigned, according to the present practice, it must be narrated ; and, in a conveyance by the assignee, or translator thereof, both the tack and assignation must be narrated ; and so on to the end of the 999 years, as every person's right must be so clear as to trace it to the first link of the chain. By these means the
last

last of these conveyances may consist of some hundreds of pages. Every transmission must be followed by possession, or by some publication, by which the conveyance may be made known; as intimation by process; by instrument of intimation to the parties concerned; or instrument of possession and registration; that so third parties may not be ensnared by latent or private conveyances. And, because the adjudication of a lease is a public and judicial act of the supreme court, transferring the right of the tack to the adjudger, a creditor adjudging that right from the tacksmen, before the tacksmen's voluntary assignee had attained possession upon his conveyance, is preferable to the assignee. As it is not, however, clearly laid down in the law-books what publication is necessary, even this
may

may cause infinite disputes. Besides, a tack does not give any security against the superior, when the fee opens to him through the fault of the setter, his vassal not being capable of confirmation. In the case of a feu-contract, it may be assigned before infeftment; and then infeftment taken and registered; which gives a complete right; and then the assignee may dispoſe, the diſponee may be infeſt, or assign, and the assignee be infeſt; which infeſtment being regiſtrate, makes a complete right; and these for forty years back an undoubted progress, good against all the world. On a tack, the wife cannot be heritably ſecured in a jointure; the tackſman cannot borrow money to carry on trade with, equal to the value of his feu, and ſecure it heritably, keeping poſſeſſion of it at the

D d

ſame

same time, on paying the interest. By the method of feu-contracts, the transmissions and incumbrances are clearly seen from the records. To gain these ends, so attained by persons having feu-contracts, and still keeping the idea of property in their minds ; these tacksmen would, in a century or two, execute many of their writings in the form of rights of property, as is evident from those executed by the rentallers of Lochmaben, and those in the village of Seaton, without abiding by their tacks ; whereby a singular success might very readily, from the defect of their titles, appropriate their possessions to himself, and remove them, as was the case with the inhabitants of Seaton on the estate of Winton, decided in 1781. But, if these rights are to be allowed at all, where are they to stop ?

May

May they not, with the same propriety, be used in place of rights to whole farms held in feu? In which case, where is the security to our land-rights arising from the records? Little argument can be drawn from the act with regard to improvement of tailzied estates, which enacts, that “proprietors of entailed estates may grant building-leases for any number of years not exceeding ninety-nine, provided that a lease of no more than five acres be granted to one person, and that the lease contain a condition, that it shall be void if one dwelling-house at least, not under the value of L. 10, be not built on each half acre, within ten years from the date of the lease, and if all the houses built be not kept in tenantable repair;” *Abstract Act, 10th Geo. III.*

Appendix to Erskine's Institutes, No. 7. p. 808. For the term allowed by this act is far from being equal to perpetuity; the most that can be contended for from it is, that tacks of a similar endurance should, *a fortiori*, be granted of lands not tailzied: But, as these leases derive their whole force from statute, even this can hardly be granted. These tacks will receive still less support from analogy to the English law and practice of conveyances by *lease and release*. Holdings there are abolished. The lease is granted for a *year*. The statute for transferring uses into possession, supplies the place of actual possession, or symbolical possession by seisin. The *release* is like a resignation *ad remanentiam*, or a renunciation of a right of reversion: And, if a practice similar hereto should
ever

ever be introduced into this part of the kingdom, the *release* would, from the spirit of our law, require to be registered.

Upon the whole, it does not appear that these long tacks are preferable, in any point of view, to feu-contracts.

Tack of Teinds by a Titular.

It is contracted, agreed, and ended, betwixt A. B. of C. titular of the teinds underwritten, on the one part, and C. D. of E. on the other part, as follows: That is to say, the said A. B. hath set, and by these presents, in tack and assedation, for the yearly rent and tack-duty underwritten, lets to the said

D d 3

C. D.

C. D. his heirs and assignees, *all and whole* the teinds, parsonage and vicarage, or the teind sheaves, and other teinds, great and small, parsonage and vicarage, of the lands of E. (here take in the lands, with their descriptions), lying within the parish of —, and shire of —, with the whole fruits, profits, emoluments, and duties of the same, for the space of three nineteen years next after the said C. D. his entry to the same; which is hereby declared to be for this present crop and year —, and from thenceforth to continue and endure for the said space of three nineteen years. Which tack above written the said A. B. binds and obliges him, his heirs and successors whatsoever, to warrant to the said C. D. and his forefairs, at all hands, and against all deadly, as law will. *For which*

which causes, and on the other part, the said C. D. binds and obliges him, his heirs, executors, and successors whatsoever, to make payment to the said A. B. his heirs or assignees, of the sum of ———, at the term of Martinmas yearly ; beginning the first term's payment thereof at the term of Martinmas next ; and so forth yearly thereafter, during all the years of this present tack ; with ——— money foresaid, of liquidate expence for each term's failure, over and above the said tack-duty ; together with the due and ordinary annualrents of the said tack-duty yearly, termly, and proportionally, during the not payment thereof, after the term of payment above written : And also, to make payment of the minister's stipend, and all other burdens and taxations, imposed, or that may be imposed,

imposed, on the said teinds, during the space foresaid. *And both* the said parties *bind* and *oblige* them, and their foresaids, to perform, &c. (Clause of Registration, and Testing Clause).

Renunciation of a Tack.

Know all men, by these presents, *me* C. D. — in E. *Whereas*, by tack bearing date —, registered in the books of council and session —, entered into between A. B. Esq; of C. and me, *on the one* and *other parts*, there was set to me, and my heirs, including assignees and sub-tenants, without consent of the said A. B. *all* and *whole* the farm of C. with the pertinents,

nents, lying as therein mentioned ; and that for the space of nineteen years from and after the term of Whitsunday then next to come, old stile ; which was thereby declared to be the commencement of the foresaid tack : And I thereby bound and obliged me, my heirs, executors, and successors, to make payment to the said A. B. his heirs, executors, or assignees, of the sum of ——— of rent yearly, for the said lands, payable at two terms in the year, Martinmas and Whitsunday, by equal portions, beginning the first term's payment at Martinmas then next, and the second at Whitsunday thereafter, for the first year of the said tack ; and so on termly thereafter, during the abovementioned space of nineteen years ; with a fifth part more of penalty for each term's failure : As
the

the said tack, containing a variety of other obligations and prestations, mutually incumbent upon the said A. B. and me, and sundry other clauses and stipulations, dated and registered as aforesaid, in itself more fully bears. *And now, seeing* I have agreed, for certain onerous causes and considerations, to cede the possession of the said lands, and tack thereof, from and after the term of Whitsunday next, old stile, in favour of the said A. B. *Therefore* I hereby *renounce, simpliciter upgive, and overgive*, from me, my heirs and successors, *all and whole* my occupation and possession of the said lands of —, with the pertinents, in virtue of the said tack in favour of the said A. B. his heirs or assignees; with power to him, and his forefairs, and his factors, tenants, or others in his name, to enter

ter to the peaceable possession thereof at Whitsunday next, old stile: *And* I oblige me, and my foresaids, to flit and remove myself, family, bairns, subtenants, goods and gear whatsoever, furth and from the said lands, at the said term of Whitsunday; and to leave the same void and redd; to the effect the said A. B. and his foresaids, may then enter thereto, and peaceably possess and enjoy the same, in all time coming thereafter: Reserving always to me, and my foresaids, my right to the ensuing crop of the said lands; *and providing and declaring* always, as it is hereby expressly *provided and declared*, that the said A. B. and his foresaids, by acceptation hereof, discharge me, and my foresaids, of the whole rents stipulated to be paid by us by the foresaid tack, and all prestations

tions thereby incumbent upon us, from and after the said term of Whitsunday —, and in all time coming. Registration for preservation and Execution.

Renunciation of a power reserved in an assignation to a tack to re-enter to the possession.

Be it known to all men, by these presents, me F. G. late in H. now in I. *Whereas* by assignation granted by me, with the special advice and consent of A. B. Esq; of C. heritable proprietor of the lands underwritten, to and in favour of J. K. — in L. of my just and equal half of the tack of —, from the said A. B. with the per-

pertinents thereto belonging ; which tack commences at Whitsunday — years, and endures for the space of nineteen years thereafter ; by which assignation the said J. K. his entry to the possession of my half of the foresaid tack is declared to be and begin at Whitsunday —, thenceforth to be peaceably possessed, under the express reservation therein and after-mentioned, during the whole — years of the foresaid tack then to run : He the said J. K. and his therein mentioned, by their acceptation thereof, bound and obliged themselves to free and relieve me and mine, of the whole obligations and prestations on my part, with C. D. — in E. joint tacksmen with me in the foresaid tack : And during the said space, there is expressly reserved to me and mine therein

E e

men.

mentioned, from the foresaid right and assignation, full power and liberty, in the event allenary of my returning to — to live, to enter to the foresaid possession at the term of Whitsunday —, or at any other term of Whitsunday thereafter, during the space of the foresaid tack, I or my foresaids please, in the event foresaid only of my return to — to live, upon due and lawful premunition always of sixty days to be made by me or my foresaids to the said J. K: or his foresaids, personally, or at their dwelling-place, before a notary and witnesses, as effeirs ; and that preceding the term of Whitsunday, at which I, or my foresaids, incline to enter to the possession aforesaid ; in which case, the foresaid right and assignation is thereby expressly declared void and null, as
the

the said assignation, of date the — day of — years more fully bears. *And now*, seeing the said J. K. has instantly made payment to me of a certain sum of money, which I accept of as the true worth and agreed value of the benefit aforesaid, of the said tack, for the last — years, reserved to me in manner foresaid; notwithstanding of my full purpose and intention to come to — to live; whereof I grant the receipt, renouncing all objections to the contrary: *Therefore wit ye me to have renounced, discharged, and given up*, as I by these presents *renounce, discharge, and overgive*, from me, my heirs and successors, *to and in* favours of the said J. K. and his forefairs, the foresaid power and liberty, expressly reserved to me and my forefairs from the foresaid assignation, in

the event of my return to — to live, of entering to the foresaid possession of —, at the term of —, or at any other term of Whitsunday thereafter, during the space of the said tack, *and do hereby declare* that the foresaid right and assignation shall, notwithstanding of the foresaid reservation, subsist and remain good to the said J. K. and his foresaids, during the whole space of the said tack, in the same manner as if the said reservation had never been made therein. Which renunciation and discharge I bind and oblige me, and my foresaids, to warrant to be good, valid, and sufficient, to the said J. K. at all hands, and against all deadly, as law will. *Registration for Preservation and Execution.*

Renunciation

Renunciation to enter Heir.

Know all men, by these presents, me C. B. — in E. Whereas there are several processses and actions raised and intended against me, at the instance of several persons, for payment of debts said to be owing, and implement of obligations prestable, by the deceased A. B. of C. my father, and letters of of general charge, purchased and execute against me at the instance of several of these creditors, whereupon I have been charged to enter heir to my said father, within forty days, in terms of the act of parliament: And seeing I am resolved not to enter heir to him, in respect I may incur great prejudice thereby; therefore to have renounced, as

I hereby *renounce*, to enter heir to my said father, and all benefit that may be competent to me as heir to him; to the effect all and every one of the said creditors may have action and execution for payment of their debts and claims, *contra haereditatem jacentem et bona mobilia et immobilia*, that belonged to my said father at his decease, as accords: *Protesting*, that, in respect of this my renunciation, no process shall be sustained against me, upon the passive title of generally charged to enter heir. *Consenting* to the registration hereof in the books of council and session, or others competent, therein to remain for preservation; and also in the general or particular register of seisin, reversions, &c. for publication: And thereto I constitute my procurators. *In witness*, &c.

Some-

Sometimes this renunciation proceeds on the narrative of a particular person having raised action, and charged to enter heir, and renounces to enter heir, to the effect that this person may have action *contra haereditatem jacentem*, &c. which makes a small variation.

Revocation after Majority.

Be it known to all men by these presents, me A. B. — in C. *Whereas*, by the laws and practice of this kingdom, it is a privilege that minors are entitled to at their majority, and before they arrive at the age of twenty-five years, to revoke all deeds granted by them in their minority; or by their
tutors.

tutors in their names, or by them with consent of their curators, to their prejudice and lesion. *And I being* past the years of minority, and within the age of twenty-five years complete ; and understanding that I have been greatly lesed and prejudged by deeds granted by me in minority, or by my tutors : *Do therefore hereby revoke, renounce, and discharge* all bonds, obligations, dispositions, and other rights, securities, or conveyances, granted by me in my minority, or by my tutors ; or by me with consent of my curators ; to my hurt, prejudice, and lesion ; to whatever person or persons, of whatever date, tenor, or contents, the same be ; dispensing with the generality hereof, and admitting and declaring this general revocation to be as good, valid, and sufficient, as if every particular

cular deed hereby revoked were herein insert (a). *Protesting* that it shall be lawful to me to reduce and set aside the same. *And* I consent to the registration hereof in the books of council and session, or others competent, therein to remain for preservation, *et ad futuram rei memoriam* : And thereto constitute, &c.

Sometimes there is at letter (a) a particular deed or deeds revoked, and it is insert thus : ‘ And particularly, ‘ without prejudice to the generality ‘ foresaid, I hereby revoke, renounce, ‘ and discharge a bond,’ (narrate it) ; or, ‘ the writs and others after mentioned, of the dates, tenors, and contents after specified, viz.’ (here narrate the writings). ‘ *Protesting*,’ &c.

Some

Some think, where there is a particular writing revoked, it should first be narrated, and the privilege of revoking mentioned in the subsumption, and then the revoking clauses to follow.

The action of reduction must be also raised within the four years after majority, to be effectual.

Revocation of donations *stante matrimonio*, and by wives *ob reverentiam mariti*, proceed in the same manner, with very little variation.

Ratification after Majority.

Be it known to all men by these presents, me A. B. — in C. *Whereas*
by

by disposition, (narrate it), as the said disposition, of date foresaid, containing obligation to invest, procuratory of resignation, clause of warrandice, assignation to the writs and evidents, a precept of seifine, an obligation that I should ratify the same, with the investment thereon, at my majority, with several other clauses at more length bears. Whereupon the said C. D. was duly invest, conform to instrument of seifine in his favours, dated, &c. registered, &c. *And* now I being attained at the years of majority, and being satisfied that the granting of the said disposition was for my benefit and advantage. *Therefore* I hereby *ratify*, *confirm*, and *approve* of the said disposition, of the date foresaid, with the investment or instrument of seifine following thereon, and whole heads, clauses,

ses, tenor, and contents, of the said writings, *admitting* and *declaring* this my general ratification to be as good, valid, and sufficient, to all intents and purposes, as if the said disposition and infestment were herein *verbatim* inserted; whereanent I have dispensed, and hereby dispense for ever. *Which* ratification I bind and oblige me to warrant at all hands, and against all deadly, as law will. *And I consent* to the registration hereof in the books of council and session, or others competent, therein to remain for preservation; and, if needful, that all execution necessary, in form, as effects, pass hereon: and thereto I constitute

my procurators. *In witness, &c.*

NOTO.

NOTORIAL INSTRUMENTS.

*Instrument, the Buyer of Victual
against the Seller.*

At and within the harbour of —, and on board the ship called —, of which — is master, where the quantity of victual underwritten was to have been delivered in manner after specified, the — day of — one thousand seven hundred and eighty — years : In presence of me notary public, and witnesses subscribing, appeared personally (a) E. F. merchant in G. having, and in his hands holding, a contract of victual, of date the —
F f
day

day of ——— last, entered into between A. B. of C. Esq; and the said E. F. on the one and other parts, whereby the said A. B. (for the causes therein specified), *sold* and *disponed* to the said E. F. his heirs, executors, and assignees, the number of one thousand bolls of victual, good and sufficient stuff, whereof five hundred bolls bear, and five hundred bolls meal, the bear of the ordinary ——— measure, and the meal at eight stone weight *per* boll, of the said A. B. his lands and estate of C. and of the crop one thousand seven hundred and eighty ——— years; which quantity of victual, of the growth, quality, measure, and weight foresaid, the said A. B. bound and obliged himself, his heirs, executors, and successors, to deliver to the said E. F. or to his forefairs, or to any having his or their order

der in writing, free on board any vessel, or vessels, in the harbour of —, to be sent therefor, betwixt and the — day of — then next, and that under the penalty of —, for each undelivered boll ; (b) as the said contract, of the date foresaid, more fully bears. After public reading of which contract above written, by me the said notary public, in presence of the witnesses after named, the said E. F. *represented*, that, notwithstanding of the contract above mentioned, and that he had made intimation to the said A. B. in terms thereof, that he was ready, willing, and attending, to receive from him the quantity of victual above mentioned, and that this was the last day of the time limited ; yet nevertheless the said A. B. had failed to deliver — bolls bear, and — bolls meal.

And therefore the said E. F. *protested* (d) against the said A. B. for breach of contract, and that he might be liable for the said sum of —, of penalty, for each undelivered boll, and for the penalty of the contract, and for all cost, skaith, damages and expences suffered, or to be suffered, through the said A. B. his not implementing the said contract. *And thereupon*, and upon all and fundry the premisses, the said (e) E. F. asked and took instruments in the hands of me notary public subscribing. *These things* were so done, betwixt the hours of and afternoon, place, day, month, and year of God, first above written : Before, and in presence of and witnesses to the premisses, specially called and required.

If

If the instrument is taken by a procurator, say at letter (a), ‘ J. K. in L. as procurator for, and having power and commission from, E. F. merchant in G, to remove the quantity of victual after mentioned, *Having,*’ &c. ; at (c) ‘ J. K. as procurator, and in name foresaid ;’ (d) ‘ J. K. as procurator foresaid ;’ and at (e) ‘ J. K. as procurator foresaid.’

The intimation of the arrival of the vessel may be in these terms :

Instrument of Intimation.

At ——— the ——— day of ———,
one thousand seven hundred and eighty
——— years : *In presence of me no-*

tary public, and witnesses subscribing, *compeared* personally J. K. — in L. as procurator for, and having power and commission from E. F. merchant in G. to receive the quantity of victual after mentioned, and with us passed to the personal presence of A. B. Esq; of C. *Having*, &c. (narrate the contract, as before, to letter (a), and add), and, *on the other part*, the said E. F. bound and obliged him, his heirs, executors, and successors, betwixt and —, to send a vessel or vessels, for receiving the said victual in the said harbour, there to remain eight work weatherly days to load the same, and to send a person sufficiently authorised to receive the victual, who should be obliged to intimate the arrival of the vessel, or vessels, to the said A. B. personally, or at his dwelling-place, from the date of which

which intimation the lie-days were to be understood to commence, as the said contract, of the date foresaid, containing several other clauses, more fully bears. *After* public reading of which contract above written, by me the said notary public, in presence of the witnesses, the said E. F. as procurator foresaid, *intimated* to the said A. B. that he had yesterday arrived with a vessel in the said harbour of ———, and was ready, willing, and attending, to receive the said victual, in terms of the said contract; *and protested*, that the said A. B. might not pretend ignorance thereof. *Whereupon*, and upon all and fundry the premisses, the said J. K. as procurator foresaid, asked and took instruments in the hands of me notary public subscribing. *These* things were so done, in the personal presence of

of the said A. B. betwixt the hours of
— and — forenoon, place, date,
and year of God respectively before
mentioned. *In* presence of — and
— witnesses to the premisses, spe-
cially called and required.

If the person to whom intimation is
to be made cannot be got personally,
say, ‘*Passed* to the dwelling-house of
‘ A. B. of C. *Having, &c. These things*
‘ were so done, within the dwelling-
‘ house of the said A. B. by leaving for
‘ him a schedule of intimation and pro-
‘ test, to the effect foresaid, subscribed
‘ by the said procurator and me the
‘ notary, with his man (or maid) ser-
‘ vant, to be given him, because we
‘ could not find himself personally, be-
‘ twixt the hours of,’ &c.

The

The schedule may be in these terms :

Schedule of Intimation.

I J. K. — in L. as procurator for, and having power and commission from, E. F. merchant in G. to receive the quantity of victual after mentioned ; *represent* to you A. B. Esq; of C. that, by contract of victual, of date, &c. (narrate it as in the last instrument,) *and intimate* that I yesterday arrived with a vessel in the said harbour of —, and am ready, willing, and attending, to receive the said victual, in terms of the said contract ; *and protest* that you the said A. B. may not pretend ignorance thereof ; *and there-
upon*

upon I, as procurator forefaid, take instruments in the hands of you ——— notary public. *This* I do upon the ——— day of ——— years, before these witnesses, ——— and ———

J. K. Procurator.

———— N. P.

INSTRUMENTS OF PROTEST UPON BILLS.

Instruments of protest upon bills are an exception in their form from the general nature of notorial instruments. All other instruments require at least four persons, the person protesting, or his procurator, the notary, and two witnesses. But bills are, for the facilitating of commerce, at desire of the party, protested by a notary before
wit-

witnesses, without a procurator, or the party himself being present.

—*Upon a Bill for not Payment.*

Miniaive, August 1. 1783.

One month after date, pay to me or order, in the coffee-house in Dumfries, twenty-five pounds Sterling, value of (Signed) *Arthur Bickerstaff*. (Addressed thus), *To Mr Abrahams Akerbraid tenant in Drumlawantie*, (Signed) *Abraham Akerbraid*.

At *Dumfries*, the first day of March one thousand seven hundred and eighty-four years, the principal bill above copied was, (1) where payable (2), duly *protested* by me notary public

public subscribing, at the instance of (a) the above Arthur Bickerstaff, Esq; of ———, the drawer, against the above designed Abraham Akerbraid the acceptor, for not payment of the contents, (b) interest, damages, and expences, as accords to law. *In presence* of ——— and ———, both writers in Dumfries, witnesses to the premiffes, specially called and required.

If in the acceptor's personal presence, say, betwixt figures (1) and (2), 'In the personal presence of the said Abraham Akerbraid the acceptor;' and then go on to *against*, and say, 'the said Abraham Akerbraid, acceptor foresaid, for not payment,' &c.

If

If there is a partial payment, after copying the bill as above, add, (marked on the back thus), Dumfries, September 1. 1783, Received of the within 'bill fifteen pounds Sterling ;' and at letter (c) say, ('deducing the partial 'payment above mentioned).'

If the bill is indorsed, after copying the bill, add, ('indorsed thus) : Pay the 'contents to Timothy Baxter, or order, (signed) *Arthur Bickerstaff* ;' and at letter (a), 'Timothy Baxter merchant in —, the indorsee against, &c. (as before). But, if the indorsee means to preserve his recourse against the drawer and indorser, the protest will be taken within *the days of grace*, or in the above case, on the fourth of September at farthest, and will be at (b), 'and against the drawer and indorser,

G g

‘dorser, jointly and severally, for recourse, and against all concerned for interest,’ &c. If there are more indorsements than one, they must all be copied in the same manner, and after (c) for *indorser*, it will be *indorsers*. If the words ‘without recourse’ are added, they must also be copied.

Where the indorsements are all blank, it is common for the notary to fill them up before protesting.

— upon a draft for not Acceptance.

L. 40.

Ayr, August 2. 1783.

At eight days sight, pay to George Griffith merchant in Glasgow, or order, forty pounds Sterling, value of (signed) *Jos. Jenkins.* (Addressed thus)

thus) *To Mr Tho. M'Dill merchant
Port Glasgow.*

At Port Glasgow, the tenth day of August one thousand seven hundred and eighty-three years (a), the principal bill or draft above copied was, by me notary public, at request of the said George Griffith, to whom the same is payable, presented to the said Thomas M'Dill for acceptance, who answered, that he would not accept the same, as he had no value in his hands, (b), I therefore protested the said bill, at the instance of the said George Griffith, against the said Thomas M'Dill for not acceptance, and against the drawer for recourse (c), interest, damages, and expences, as accords to law. In presence of — and —, witnesses to the premises specially called and required.

In foreign bills, or bills of exchange, there is commonly added, at letter (c)
'Exchange, re-exchange.'

If the person drawn on is not found personally, it may be done at his dwelling-house; in which case the protest
'will be at letter (a). 'Which day I
'——, notary public subscribing, passed, at desire of the said George Griffith,
'to the dwelling-house of the above
'designed Thomas M'Dill, and required acceptance of the bill or draft above copied; but was answered that
'he was not at home. I therefore,'
&c.

Where the person drawn on lives in a large city, if neither he nor his dwelling-house can be found, the notary should go to the market-cross, exchange coffee-house, or other most public

blic places ; and, if furth of the kingdom, to the market-cross of Edinburgh, pier and shore of Leith. If the person drawn on is dead, a short time previous to the time of presenting, it ought to be done at the dwelling-house where he died.

Where the person drawn upon is not found personally, it is thought a schedule should be left, particularly where it is done at his dwelling-house.

—*Upon a Draft when due, for not Payment.*

(Copy the Bill.)

At Port Glasgow the twenty-first day of August one thousand seven hundred

G g 3

and

and eighty-three years, which day I notary public subscribing, passed, at request of the above George Griffith, to the personal presence of the said Thomas M'Dill ; and, after exhibiting, and reading over to him the principal bill above copied, and representing that the said bill had been presented upon the tenth day of August current; and protested for not acceptance, required payment of the same ; which being refused, *I duly protested* the said bill, not only against the said Thomas M'Dill, to whom the same is addressed for not payment of the contents ; but also against the said Joseph Jenkins — in —, the drawer, for recourse ; and against all concerned, for interest, damages, and expences, as accords to law. In presence of _____ and _____ wit-

witnesses to the premises specially called and required.

— *for not acceptance, and not payment of a bill payable against a day certain.*

At —, the — day of —, one thousand seven hundred and eighty — years : Which day I — notary public subscribing, at desire of — merchant in —, the indorsee, passed to the personal presence of the above designed —, and required him to accept the draft above copied, or pay the contents thereof; which he refused, alledging he had not value of the drawer's in his hands : I therefore *protested* the said draft, at the instance

instance of the said ———, the indor-
 fee, against the said ———, to whom
 the same is addressed, for not accep-
 tance, and not payment, and against
 the drawer and indorser, for recourse ;
 and against all concerned for damage,
 interest, and expences, as accords to
 law. In presence of ——— and
 ——— witnesses to the pre-
 mises specially called and required.

——— for not acceptance, and not pay-
 ment, at the dwelling-house.

At ———, the ——— day of ———,
 one thousand seven hundred and eigh-
 ty ——— years : Which day I ———,
 notary-public subscribing, passed, at
 desire of ———, to whom the bill or
 draft

draft above copied is payable, to the dwelling-house of the above designed ———, and required acceptance or payment of the said bill or draft ; but was answered, that the said ——— was not at home : *I* therefore *protested* the said draught, at the instance of the said ———, against the said ———, for not acceptance, and not payment ; and against the drawer for recourse ; and against all concerned, for damages, interest, and expences, as accords to law. In presence of ——— and ———, witnesses to the premiffes, specially called and required.

In case the person drawn on, or any of the indorsers, incline to pay the bill, for the honour of the drawer, or any of the other indorsees, he may pay, and have them bound to him for his

re-

recourse, tho' the protest be not in his name, or he have no re-conveyance; the *Act of Honour* is thus expressed after the protest.

Act of Honour.

Threafter, in presence of me the said
 ' notary public and witnesses, *compeared*
 ' the said T. M'D. and declared, that,
 ' though he would not pay the said
 ' bill in the manner it was drawn, yet
 ' he would pay the same under protest,
 ' for the honour of the said ———,
 ' the drawer; holding nevertheless the
 ' said ——— liable to him for his re-
 ' payment, recourse, exchange, re-ex-
 ' change, interest, damages, and ex-
 ' pences, as accords; and thereupon
 ' took instruments in the hands of me
 ' notary public: In presence of,' &c.

Then

Then follows the receipt for the money. Or the whole may be shortly thus :

‘ And thereafter appeared —, who
‘ offered to pay the said bill, for the honour of the said — the drawer,
‘ and accordingly paid the same ; under protest, that the said —, and
‘ the said indorsers, should be liable to him in repayment, recourse,’ &c. (as before).

—on a *Promissory Note.*

Edinburgh, August 5. 1782.

One day after date, I Peter Pennyless, writer in Edinburgh, promise to
pay

pay to William Writewell, or order, at the Exchange Coffee-house here, the sum of twenty pounds Sterling, for value, (Signed) *Peter Pennylefs.*

At —, the — day of —, the principal promissory note above copied was, where payable, duly *protested*, by me notary public subscribing, at the instance of William Writewell — in —, to whom the same is payable, against the said Peter Pennylefs the granter, for not payment of the contents, &c. (as on a bill).

— on Draft, Principal Tacksmen upon the Subtenants, in favour of the Proprietor's Factor obliging himself to allow it at 'counting.

N—ft—t, June 12. 1782.

Gentlemen,

On demand, pay to Mr R. B. factor to the Right Hon. the Earl of G. in part of resting rent due by me to his Lordship, twelve pounds Sterling, and his receipt hereon shall oblige me to allow the same at 'compting, (signed) J. G. (Addressed thus), *To P. M'K. and J. M'N. both in K. jointly and severally.*

H h

At

At K——, the —— day of ——
—— years, which day I —— no-
tary public, passed to the personal
presence of the above designed
P. M'K. and J. M'N. and required
them to accept the obligation or
draft above copied, which they re-
fused to do, alledging that they had
not value of the drawer's in their
hands : I therefore *protested* the said
draft, at the instance of R. B. above
designed, to whom the same is pay-
able, against the saids P. M'K. and
J. M'N. jointly and severally, for
not acceptance, and not payment ;
and against J. G. —— in ——,
the drawer, for recourse ; and a-
gainst all concerned for damages,
interest, and expences, as accords.
In presence of, &c.

— *of a Bill in the Acceptor's Presence, for not payment of the Annualrent and Expences.*

(Copy the bill, and receipt for the principal sum, on the back).

At —, the — day of —
— years : Which day, the principal bill above copied, was, in presence of the above designed R. M'K. the acceptor, at —, duly *protested* by me notary public subscribing, at the instance of A. B. of C. the drawer, against the said R. M'K. acceptor, for not payment of the annualrents, damages, and expences, as accords to law. *In presence of, &c.*

*Schedule of a Protest on a Bill,
payable at a day certain, for not
acceptance, and not payment.*

I ——— notary public, hereby *pro-*
test the bill above copied, at the in-
stance of A. C. in B. the indorsee, a-
gainst you the above designed D. E.
for not acceptance, and not payment,
and against the drawer and indorser
for recourse ; and against all concern-
ed, for annualrent, damages, and ex-
pences, as accords to law. This I do
this ——— day of ———, before these
witnesses, ——— and ———.

————— N. P.

From this the form of any other
schedule of a protest on a bill will rea-
dily occur.

I N S T R U.

INSTRUMENTS OF SEISINE

U P O N

FEU CONTRACTS, CONVEYAN-

CES THERETO, &c.

*Instrument of Seisin upon a Contract
of Feu.*

In the name of God, Amen. Be it known to all men, by this present public instrument, That, upon the — day of —, one thousand seven hundred, and eighty — years, and of the reign of our Sovereign Lord George the Third, by the grace of God King of Great Britain, France, and Ireland,

H h 3

the

the ——— year. *In prefence* of me notary public and witneffes fubfcribing, *compeared* personally as procurator and attorney for D. E. merchant in F. (whose power of procuratory was fufficiently known to me notary public), who, with

bailie in that part, by the precept of feifine after insert, fpecially conftitute, paffed with us to the ground of the tenement of houfe and yard after mentioned ; the faid attorney *having*, and in his hands *holding*, a contract of feu, entered into between A. B. Efq; of C. and the faid D. E. on the one and other parts, dated the ———— day of ————, and containing the precept of feifine after insert, whereby the faid A. B. for the payment of the yearly feu duty, and performance of the other preftations

tions therein and after specified, with and under the conditions and provisions after expressed, *set*, and in feu-farm and heritage, perpetually *let* and *disposed*, from him, his heirs and successors, to, and in favour of, the said D. E. his heirs and assignees whatsoever, heritably and irredeemably ; *All* and *whole* (here insert the tenement), with the whole parts, pendicles, and pertinents thereof, all lying within the parish of ———, and sheriffdom of ——— ; together with all right, title, interest, claim of right, property, and possession, petitory and possessory, which the said A. B. his authors and predecessors, had, have, or any ways might have, claim, or pretend thereto, in time coming : Declaring his entry thereto to have been and begun at the term of Whitsunday then last, thenceforth

forth to be peaceably possessed and enjoyed by the said D. E. and his forefairs, in feu-farm, fee, and heritage, for ever; with full power to the said D. E. and his forefairs, to use all manner of free trade and traffic within the said town or village, as freely as any other trader within the same are in use to do: *For the which causes*, the said D. E. *bound and obliged* him, his heirs and successors whatsoever, to make good and thankful payment to the said A. B. Esq; and his forefairs, superiors of the said house and yard, of the sum of ——— Sterling money yearly, at the term of Martinmas, in name of feu-duty; declaring the first term's payment of the same to commence and begin at Martinmas then next, for the first half-year's feu-duty then due, and so forth yearly at Martinmas

tinmas in all time thereafter, with two Fasteneven hens yearly at the usual terms of payment, and doubling the feu-duty the first year of the entry of every heir or heirs thereto, as use is, of feu farm allenary; and also doubling the feu-duty the first year of the entry of each singular successor thereto, to which sum such entry is thereby declared to be taxed, so oft as the same should happen, without any further composition whatever: *As also*, the said D. E. bound and obliged himself, and his foresaids, to compear and answer to all the courts to be holden in the said town or village, by the superior, or his bailies, when lawfully cited thereto, and to obey the statutes thereof, under the pain of —, as an unlawful or amerciament for each failzie: And further, thereby bound and a-
stricted

stricted himself to the corn-mill of the barony of C. commonly called the mill of C. and thereat to grind all their corn and malt, and to pay the 'multure' used and wont, as the other inhabitants of the said town or village are in use to pay, and that they shall be liable in the like services as any other feuer within the same are or shall be in use to perform; and bound and obliged himself, and his foresaids, to free and relieve the said A. B. and his foresaids, of all public burdens, impositions, and other taxations, that were, or should happen to be imposed, upon the said house and yard, with the pertinents, therein before disposed, in time coming, after the said term of Whitsunday; and that, as the other inhabitants and feuers were or should be in use to do; the said A. B. freeing
and

and relieving the said D. E. of all public burdens, and others, payable for the same, preceding that term ; with and under which conditions, obligations, and prestations, to be performed by the said D. E. and his forefairs, the said contract is made and granted, and no otherwise : As the said contract, containing obligations to invest, clause of absolute warrandice, the precept of seifine after insert, and several other clauses more fully bears (a). Which contract of feu the said

procurator foresaid, exhibited and presented to the said bailie, by the said precept of seifine, to the effect after mentioned, specially constitute, humbly requiring him to proceed to the due execution of his office of bailiary thereby committed to him ; which desire the said bailie finding

ing reasonable, he accepted and received the said contract of feu, containing the precept of seifine after insert into his hands, and delivered the same to me notary public subscribing, to be read and published in presence of the witnesses subscribing, then bystanding, which I accordingly did, and of which precept of seifine the tenor follows : ‘ *Attour,*’ &c. (Take it in, with the subscriptions of the parties and witnesses). *After* reading and publishing of which contract of feu, and precept of seifine therein contained, the said bailie foresaid, by virtue thereof, and of his office of bailiary thereby committed to him, gave and delivered to the said D. E. heritable state and seifine, with actual, real, and corporal possession, of the said tenement of house and yard, with the
per-

pertinents, lying, as said is, to be holden in manner therein mentioned; with and under the obligations, prestations, and conditions before specified; and that by deliverance to the said procurator and attorney foresaid, for the said D. E. of earth and stone of the ground thereof; after the form and tenor of the said contract of feu, and precept of seifine, in all points. *Whereupon*, and upon all and sundry the premisses, the said

as procurator foresaid, asked and took instruments, one or more, as many as needful, in the hands of me notary public subscribing: *These* things were so done, upon the ground of the said tenement of house and yard, in manner mentioned in this public instrument: Betwixt the hours of

and

noon, of
the

the day, month, year of God, and of
the King's reign, respectively first a-
bove written. Before, and in presence
of _____ and

_____ witnesses to the pre-
misses specially called and required.

*Instruments of Seifine upon a Dispo-
sition and Assignation to a Con-
tract of Feu before Infeftment.*

This instrument will narrate the
contract of feu as above, only the re-
ceiver of it will fall to be designed, the
procurator not being procurator for
him : After which it will go on thus,
at letter (a). ‘ As also, *having* and
‘ *holding* in his hands a disposition and
‘ affig-

‘ assignation, dated the ——— day of
‘ ———, made and granted by the
‘ said D. E. to the said G. H. where-
‘ by (for the causes therein specified),
‘ the said D. E. with and under the
‘ burden of payment of the yearly feu-
‘ duty, and performance of the other
‘ obligations and prestations contain-
‘ ed in the said contract of feu, *assign-*
‘ *ed, conveyed, and made over*, from
‘ him, his heirs and successors, to, and
‘ in favours of the said G. H. his heirs
‘ and assignees whatsoever, heritably
‘ and irredeemably, *All and whole* the
‘ said tenement of house and yard a-
‘ bove written ; and particularly assign-
‘ ed to him, and his forefairs, the con-
‘ tract of feu above narrated ; with
‘ power to him to obtain himself infest
‘ in the said house and yard, in virtue
‘ of the precept of seifine contained in

‘ the faid feu-contract ; as the faid dif-
 ‘ pofition and affignation, containing
 ‘ feveral other claufes, more fully
 ‘ bears : *Which* contract of feu, and dif-
 ‘ pofition and affignation thereto, &c.
 ‘ received the faid writs into his
 ‘ hands, &c. *After* reading and pu-
 ‘ blifhing of which contract of feu, and
 ‘ precept of feifine above insert, there-
 ‘ in contained, and difpofition and af-
 ‘ fignation thereto, above mentioned,
 ‘ &c. to the faid G. H. as having right
 ‘ in manner above mentioned, &c. af-
 ‘ ter the form and tenor of the faid
 ‘ contract of feu, and precept of fei-
 ‘ fine, therein contained, and difpofi-
 ‘ tion and affignation thereto, in all
 ‘ points,’ &c.

Seifine, upon a difpofition and af-
 fignation in favour of a fon, will dif-
 fer

fer in nothing from the above, but in inserting the words. '*Gave, granted, disposed, and made over,*' in place of '*assigned, conveyed, and made over;*' as seifine is not commonly taken thereon in the lifetime of the granter, and of course the reservations unnecessary to be taken notice of.

*Instrument of Seifine upon a Precept
of Clare Constat.*

In, &c. In presence, &c. Compeared, &c. Holding the precept of seifine, commonly called a precept of clare constat, after insert, of date, &c. granted by A. B. Esq; of C. superior of the house and yard after mentioned, with the pertinents, to and in favour of

G. E. merchant in F. as heir of the deceased D. E. merchant there, his father, of *all* and *whole* the said tenement of house and yards, of the date, tenor, and contents under-written : *Which* precept of seifine, commonly called a precept of *clare constat*, the said _____, as procurator foresaid, *exhibited*, &c. he accepted and received the said precept into his hands, &c. tenor follows : ‘ A. B. ‘ Esq; of C. &c.’ (to the end, including the subscriptions of the granter, and witnesses). *After* reading and publishing of which precept of *clare constat*, &c.

Instrument

Instrument of Seifine upon a Disposition of a House and Yard held in Feu.

In, &c. In prefence, &c. Compeared,
&c. *Holding* a difpofition, of the date
contained in the precept of feifine after
infert, made and granted by A. B.
—— in C. heritable proprietor of
the houfe and yard after mentioned,
whereby, (for the caufes therein fpec-
ified), the faid A. B. did, with and
under the burden of the payment of
the yearly feu-duty, and performance
of the other obligements and prefta-
tions therein (a) and underwritten,
fell, alienate, and difpone from him, his
heirs and fucceffors, to, and in favour
of the faid D. E. his heirs and affig-
nees

nees whatsoever, heritably and irredeemably; *all* and *whole* (here take in the description of the tenement from the disposition) lying within the parish of ———, and sherriffdom of ———, together with all right, title, interest, claim of right, property, and possession, petitory or possessory, which he, his authors and predecessors, heirs and successors, had, have, or might have, claim, or pretend thereto (*b*). *And it is thereby expressly provided and declared*, that the said C. D. and his forefairs, should be bound and obliged, as by acceptation thereof he bound and obliged himself, and his foresaids, to warrant, free, and relieve, harmless and skaithless keep, the said A. B. and his foresaids, from payment to ———, and his heirs and successors, superiors of the said house and yards, of the sum

sum of ——— money yearly, at the term of Martinmas, in name of feu-duty, beginning the first term's payment of the same at Martinmas then first, and so forth yearly, in all time thereafter, with two Fasten-even hens yearly, at the usual term of payment, and doubling the feu-duty the first year of the entry of every heir or heirs thereto, as use is, of feu-farm allenary ; and also doubling the feu-duty the first year of the entry of each singular successor therein, to which sum such entry is taxed, without any further composition ; and compearing and answering to all courts to be holden in the said town or village, by the superior, or his bailies, when lawfully cited thereto, and obey the statutes thereof, under the pain of ———, as an unlaw or amerciament
for

for each failzie ; and bound and a-
stricted himself, and his foresaids, to
the corn mill of the barony of C. com-
monly called the mill of C. and there-
at to grind all their corn and malt,
and to pay the multures used and wont,
as the other inhabitants of the said
town or village are in use to pay ; and
shall be liable in the like services as a-
ny other feuer within the same are in
use to perform ; and, in like manner,
to free and relieve the said ——— and
his foresaids, of all public burdens, im-
positions, and other taxations, that were
or should happen to be imposed upon
the said house and yard, with the per-
tinents, in time coming, from and af-
ter the said term of ——— allenary ;
and to be liable, effeiring to their part
and portion, in payment of the cus-
toms, and other exactions, that might
be

be due and payable by the faid town or village; as the other inhabitants thereof were, or should be, in use to do; with and under which conditions, obligements, and prestations, particularly above expreffed, the contract of feu of the faid house and yard, entered into between the faid ———, and the faid A. B. of date the ——— day of ———, and the faid difpofition are made, granted, and no otherwife (c), as the faid difpofition, containing obligation to infeft, by two feveral infeftments and manners of holding *,
pro-

* It will be obferved that, in the fecond edition of the *Forms of Writings*, the latter part of the obligation to infeft has been by miftake omitted, and fhould run thus: ' To
' be holden in manner after mentioned, by
' two feveral infeftments and manners of
' holding,

procuratory of refignation, claufe of absolute warrandice, affignation to the writs, and to the rents, mails and duties, the precept of feifine after insert, and feveral other claufes, more fully bears. Which difpofition, &c.

If it is not exprefsly mentioned in the warrant, that the obligations upon the vaffal are to be insert in the infeftments ; at letter (*a*) leave out ‘ and
‘ under-

‘ holding, the one thereof to be holden of
‘ me, my heirs and fucceffors, in free blench,
‘ for payment of a penny, Scots money, up-
‘ on the ground of the faid houfe and yard,
‘ at the term of ——— yearly, if asked alle-
‘ narily ; and the other of the faid infeft-
‘ ments to be holden from me, and my fore-
‘ faids, of our immediate lawful fuperiors
‘ thereof, in the fame manner, and as freely,
‘ as we held, hold, or might held, the fame
‘ ourfelves ; and that either,’ &c.

‘underwritten ;’ and leave out what is between (b) and (c).

*Instrument of Seifine upon a Charter
of Confirmation, and Precept of
Clare Constat.*

In, &c. In presence, &c. Compeared personally upon the ground of the tenement after mentioned, G. D. merchant in E. to whom, and in whose favours, the charter of confirmation, and precept of seifine, commonly called a precept of *clare constat*, after insert, is made and granted ; *where compeared* also personally

bailie in that part, specially constitute by the said precept of seifine, called a precept of *clare constat* ; the said G. D.

K k

having,

having, and in his hands holding, a charter of confirmation, containing the said precept of seifine, called a precept of clare constat after insert, of the date mentioned in the subscription clause thereof, made and granted by H. L. Esq; of M. superior of the house and yard underwritten, with the pertinents, ratifying, approving, and for him, his heirs and successors, perpetually confirming, a disposition, dated the — day of —, made and granted by A. B. in C. heritable proprietor of the house and yard thereby disposed to, and in favour of, the now deceased C. D. in E. his heirs and assignees, heritably and irredeemably ; of all and whole, &c. (insert the subject), lying within the parish of —, and sheriffdom of — : together with the obligation to invest, and precept of seifine,

seifine, contained in the said disposition, and instrument of seifine following thereon, in favour of the said C. D. dated the — day of —, and registered in the — register of seifines, kept at —, the — day of —; and that in the whole heads, articles, clauses, tenors, and contents, of the said disposition and infestment; as the said charter of confirmation, containing the said precept of *clare constat* after insert, more fully bears: *Which charter*, containing the said precept, the said G. D. exhibited and presented to the said

bailie foresaid, by virtue of the said precept of seifine, desiring him to proceed to the due execution of his office of bailiary thereby committed to him: Which desire the said bailie finding reasonable, he accepted and received

the faid charter, containing the precept of *clare constat*, into his hands, and delivered the fame to me notary public fufcribing, to be read and publifhed in prefence of the witneffes fufcribing, then byftanding, which I accordingly did; and of which precept of *clare constat* the tenor follows: ‘*And where-as,*’ &c. (infert the precept). *After* reading and publifhing of which charter, and precept of *clare constat*, above infert, therein contained, the faid

bailie in that part forefaid, by virtue thereof, and of his office of bailiary thereby committed to him, gave and delivered heritable ftate and feifine, with actual, real, and corporal poffeffion, of *all* and *whole* the faid tenement of houfe and yard, with the pertinents, to the faid G. D. as heir forefaid, by delivery to himfelf, personally

ally present, of a little earth and stone of the ground of the said tenement, as use is, after the form and tenor of the said precept, in all points. *Whereupon*, and upon all and sundry the premisses, the said G. D. asked and took instruments in the hands of me notary public subscribing. *These* things were so done, upon the ground of the said tenement, betwixt the hours of and noon, of the day of the month, year of God, and of the King's reign, *respectivè*, first above written, before and in presence of ——— and ———, witnesses to the premisses, specially called and required,

*Instrument of Seifine upon a Charter
of Resignation.*

In, &c. In presence, &c. Having, and in his hands holding, a charter of resignation, dated the —— day of ——, made and granted by H. L. Esq; of M. superior of the house and yard after written, whereby he gave, granted, and disposed, and perpetually confirmed, to the said C. D. his heirs and assignees whatsoever, heritably and irredeemably, all and whole, &c. (insert the subject), with the whole parts, pendicles, and pertinents thereof, with all right and title, which he had, or could pretend, to the said house and yard, or to the rents, mails, and duties of the same : Which house and yard, and others above disposed, formerly belonged
ed

ed heritably (a) to B. C. hold of the said H. L. as superior thereof, and were disposed to the said C. D. by disposition, containing procuratory of resignation, dated the — day of —, and by virtue of the procuratory of resignation, contained in the said disposition, the said house and yard were duly and lawfully resigned, in the hands of the said H. L. as immediate lawful superior of the same, by staff and baton, as use is, in favour, and for new infeftment thereof, to be made, given, and granted to the said C. D. his heirs and assignees, but with and under the burden of payment of the yearly feu-duty, and performance of the several obligations and prestations therein and after-mentioned, and which were specially to be contained in the infeftments to follow thereupon: *To be holden*, the said house
and

and yard, with the pertinents, of the said H. L. his heirs, successors, and assignees whatsoever, by all just meiths and marches, and ancient boundaries and divisions of the same : *Giving* therefore yearly the said C. D. and his foresaids, the sum of — money, at the term of Martinmas, with two Fasten-even hens yearly, at the usual term of payment, and doubling the feu-duty the first year of the entry of every heir or heirs thereto, as use is, of feu-farm, &c. (as in the former examples) ; (b) as the said charter, containing the precept of seifine after insert, and several other clauses, more fully bears. *Which* charter, &c.

If it is not particularly mentioned in the writings and title-deeds, that the obligations on the vassal are to be contained

tained in the infeftments, it will be much shorter, as it may be at letter (a); ‘and are held for payment, in ‘manner mentioned in the faid charter of refignation;’ and leave out all that follows to (b).

In case there is a clause of *novodamus*, fay at (b), ‘as the faid charter, ‘containing a clause of *novodamus* of ‘the faid houfe and yard, and others ‘above written, the precept of feifine,’ &c.

INSTRU.

I N S T R U M E N T

O F

R E S I G N A T I O N.

In the name of God, Amen. Be it known to all men, by this present public instrument, that, upon the day of _____, one thousand seven hundred and eighty — years, and of the reign of our sovereign Lord, George the Third, by the Grace of God King of Great Britain, France, and Ireland, the — year. In presence of H. L. Esq; of M. superior of the house and yard after mentioned, within the house
of

Instrument of Resignation. 395

of ———, in ———, and within the
—— room thereof; and also in pre-
sence of me notary public and witnesses
after designed, subscribing, *compeared*
personally J. P. writer in ———, as
procurator for, and in name of, A. B.
—— in C. to the effect after specified,
specially constitute, by virtue of the
procuratory of resignation after men-
tioned; and there the said J. P. as
procurator for, and in name and be-
half foresaid, with all due reverence,
and humbly as became, resigned, gave
up, and surrendered, from the said
A. B. and his foresaids, *all and whole*
(describe the tenement) lying within
the parish of ———, and sherriffdom
of ———, together with all right, title,
or interest, he had, or could pretend
thereto, *in the hands* of the said H. L.
immediate lawful superior thereof; *in*
favour,

favour, and for new investment of the same, to be made and granted to C. D. in E. and his heirs and assignees whatsoever, heritably and irredeemably, in due and competent form, as effects; by virtue of, and conform to, the procuratory of resignation contained in a disposition of the said house and yard, by the said A. B. to the said C. D. dated —, *and* that by deliverance made to the said J. P. as procurator foresaid, of the staff and baton, as use is, in the hands of the said H. L. immediate lawful superior thereof; which resignation being so made and accepted of by the said H. L. he the said H. L. immediately thereafter gave, granted, and disposed back, to the said C. D. his heirs and assignees whatsoever, heritably and irredeemably, the house and yard above mentioned, with the pertinents, conform

form to the charter to be made and granted by the said H. L. superior fore-said, to him thereanent, in all points ; and that by re-deliverance made by the said H. L. of the said staff and baton, in the hands of the said J. P. as procurator and attorney for, and in name and behalf of the said C. D. whose power of procuratory was sufficiently known to me notary public : *Whereupon*, and upon all and fundry the premisses, the said J. P. as procurator foresaid, for the said C. D. asked and took instruments in the hands of me notary public subscribing. These things were so done within the house of the said —, and — room thereof, betwixt the hours of — and — forenoon, day, month, year of God, and of his Majesty's reign, respectively above mentioned, before and in pre-

L I

sence

fence of

and

witnesses to the premises, speci-

cially called and required.

NOTORIAL

INSTRUMENTS.

*Instrument of Intimation of a Deliv-
erance upon a petition of apply-
ing for aliment or liberation on the
act of Grace, written on the back
of the petition.*

At D——, the twenty-sixth day
of February one thousand seven hun-
dred and seventy-three years. Which
day, in presence of me notary public,
and witnesses subscribing, *compeared*
indweller in D——,
as procurator for the within designed
A. B.

indweller in D—,

as procurator for the within designed

A. B.

A. B. petitioner, who passed to the personal presence of the within designed J. C. and having found him within the office of ———, writer there, he the said ———, as procurator foresaid, duly and lawfully intimated the within written petition, and above deliverance thereon, to the said J. C. to the effect mentioned in the said deliverance, and delivered to him a full copy of both petition and deliverance, with a schedule of intimation to the effect foresaid, signed by the said ——— bearing this date, with the names and designations of the witnesses after mentioned ; and *protested* that the said J. C. might not pretend ignorance of the said petition ; and *thereupon* took instruments in the hands of me notary public subscribing ; before ——— and

L l 2

wit-

witnesses to the premises, specially
called and required.

The schedule may be in these terms,
after the copy of the petition and deli-
verance.

I procurator for the
before designed A. B. do hereby *intimate* to you, the also before designed J. C. a petition given in to the magistrates of D. by him this day, together with the said magistrates their deliverance of the same date, to the effect therein mentioned ; of which petition, and deliverance thereon, a full double or copy is wrote on the two preceding pages ; *and protest*, that you may not pretend ignorance thereof; *and thereupon* I take instruments in the hands

hands of ——— notary public : This
I do upon the twenty-sixth day of Fe-
bruary one thousand seven hundred
and seventy-three years, before these
witnesses, ——— and ———.

*Instrument of Intimation of the mo-
dification of an aliment to a poor
prisoner.*

At ———, the ——— day of ———
—— years, *In presence* of me notary
public and witnesses subscribing, *com-
peared* ——— as procurator for A. B.
present prisoner in the tolbooth of D. ;
and passed to the personal presence of
J. C. in S. at whose instance the said
A. B. is incarcerated ; and there the

faid _____, as procurator
foresaid, made due and lawful intima-
tion to the said J. C. that, in conse-
quence of a petition to the magistrates
of the borough of D. by the said A. B.
setting forth, that he was incarcerated
in the tolbooth of D. at the instance of
the said J. C. and that he was unable
to aliment himself in prison, upon
which he was willing to make faith in
their presence, in terms of the 32d
chap. and 6th session of King Wil-
liam's first parliament, entitled, "act
anent the aliment of poor prison-
ers;" and therefore craving they
would consider the premisses, and take
his oath thereupon; and ordain the
said J. C. to provide and give security
for such aliment as they should modi-
fy; the said magistrates had, upon the
fourth day of March, taken the said
A. B.'s

A. B.'s oath, that he was not able to aliment himself in prison ; and having also, upon the eighth day of said month, seen the disposition executed by him ; they, in respect thereof, and of his oath, modified an aliment to him of — shillings Scots, payable by the incarcerator, or others, who detained him ; and ordained the creditors to provide or give security for the said aliment within ten days, otherwise they would set the petitioner at liberty, in terms of the act of parliament founded on in the petition ; and therefore the said , as procurator foresaid, *did intimate* the foresaid deliverance, modifying the said aliment to the said A. B. ; *and protested*, that he should provide or give security for the said sum, to be paid to the said A. B. *per diem*, during his im-

imprisonment, within ten days after the said intimation ; with certification, if he failed so to do, that the said magistrates would liberate the said A. B. out of prison, in terms of the foresaid act of parliament ; which petition, deposition, and deliverance foresaid, the said _____ as procurator foresaid, produced and showed to the said J. C. *and thereupon*, and upon all and sundry the premisses, took instruments in the hands of me notary public subscribing, &c.

Instrument of Intimation of a Bill of Suspension.

It is here to be observed, that, by a late regulation, the person getting out

a sifted bill of suspension from the bill-chamber, must give a receipt therefor ; if the charger means to answer it, he marks for a copy of it ; and, if the principal bill is not returned, caption is got out against the person who received it : Since this regulation, the principal bill of suspension is seldom transmitted to the client or country employer for intimation ; but, in place thereof, a notorial copy of it, and of the sift thereon ;—if no copy is taken, or answers made, which supersede the necessity of intimation, on returning an intimation, the bill is passed, which intimation is in these terms ;

At ———, the ——— day of ———
———, the within notorial copy, bill
of suspension, and sift thereon, was by
me notary public, at desire of the
within

within designed ———, duly intimated to the also within designed ———, by (a) giving him inspection thereof; before and in presence of ———, and ———, witnesses thereto, specially called and required.

‘ (a) or by delivering to him a full
 ‘ double or copy thereof, with a note
 ‘ of intimation thereto subjoined, duly
 ‘ signed by me.’

Or, if he is not at home, by leaving it, as in former examples.

It is not, however, held absolutely necessary that the intimation be made by a notary, as it is frequently done by the agent's clerk.

Instru-

Instrument of Interruption.

At, and upon the bounds of the lands of ———, the ——— day of ——— years, and of his Majesty's reign the ——— year ; in presence of me notary public and witnesses subscribing, *compeared* personally A. B. of C. heritable proprietor of the said lands, and passed with us to these parts and portions of the said lands, within the bounds and marches aftermentioned, commonly called ———, *respective and successive ; having*, and in his hands *holding*, a disposition, made and granted by G. H. Esq; of I. dated the ——— day of ——— ———, whereby the said G. H. *sold, alienated, and disponed*, to C. B. of C. now deceased, his heirs
and

and assignees, heritably and irredeemably, *all and whole* the lands of —, with the whole parts, pendicles, and pertinents of the same, bounded and marched as follows, - viz. (here take in the bounds), lying within the parish of —, and sheriffdom of — : And, after reading the said disposition, the said A. B. as succeeding to the said C. B. his author and predecessor in the foresaid lands, by progress, *represented* that J. L. of M. his men, tenants, and servants, had most wrongously and unjustly incroached upon the said bounds and marches of the said A. B.'s lands of —, as they are described in his author's bounding charter or disposition above expressed ; and that by building dikes thereon, and inclosing the same, at the said places, commonly called —, to the extent

extent and value of ——— yearly,
 which tends to the said A. B. his great
 loss and damage : *And* therefore the
 said A. B. at the said respective places,
 called ——— and ———, made civil in-
 terruption against the said intrusion
 and incroachments made by the said
 J. L. and his men, tenants, and ser-
 vants, on his property ; and that, by
 throwing down some stones from the
 said dikes ; *and protested* that the said
 J. L. might be liable to him for all
 cost, skaith, damages, and expences of
 law, which might arise from his said
 intrusion and incroachments made up-
 on his lands, and within his marches :
And thereupon took instruments at the
 said several places, in the hands of me
 notary public subscribing. *These* things
 were so done upon the ground of the
 foresaid bounds, betwixt the hours of

M m

— and — in the afternoon, upon the day, month, and year of God above written. In presence of — and —, witnesses to the premisses specially called and required.

Civil interruption may also be made by citation, or making a demand in a court of justice, or by charge of hounding.

Bill of suspension is in practice often given in, against any unlawful act, as building on another person's property.

Instrument

Instrument of Possession.

At ———, the ——— day of ———
 ——— years. The which day, in pre-
 sence of me notary public and witnes-
 ses subscribing, *compeared* personally
 as procurator for
 the within named and designed C. D.
 (a), and passed to the personal presence
 of the also within named and designed
 A. B. in his dwelling-house of ———,
having, and in his hands *holding*, the
 principal disposition within written,
 granted by the said A. B. of his whole
 household plenishing, horses, and o-
 ther moveables, therein specified, da-
 ted the ——— day of ——— ———, and
 contained in a particular inventory of

the same, also subscribed of the same date. Which disposition and inventory above mentioned the said

procurator foresaid, exhibited and presented to the said A. B. humbly requiring him, in terms of the said disposition, *ex propriis suis manibus*, to give and deliver to the said C. D. real, actual, and corporal possession, of the household furniture, and other goods and gear above expressed, contained in the said disposition and inventory above written. Which request and desire being reasonable, the said A. B. accepted thereof, and received the said disposition and inventory into his hands, and gave the same to me notary public, to be read and published in presence of the witnesses ; all which I accordingly did. After reading and publishing of which disposition and inventory

ventory in manner foresaid, the said A. B. in consequence, and in implement thereof, gave and delivered to the said C. D. real, actual, and corporal possession, of the household furniture, plenishing, horses, and other moveables, particularly enumerated and expressed, in the foresaid disposition and inventory above mentioned; and that, by giving and delivering to the said _____ as procurator for the said C. D. of a particular species or piece, of all or most of the said household furniture, and instruments of husbandry, with one of the said horses by the ear, as symbols for and in name of the whole, as use is; after the form and tenor of the said disposition and inventory, in all points. *Whereupon*, and upon all and sundry the premisses, the said _____ as

procurator foresaid, asked and took instruments in the hands of me notary public subscribing. These things were so done at and within the said A. B. his dwelling-house, and offices thereof, where the household furniture, horses, and other moveables, then were, *respective* and *successive*, after others, betwixt the hours, &c.

If there is a precept of possession, and the granter cannot attend himself; say at letter (a), ‘ Who with ———, ‘ procurator, specially constitute by ‘ the precept of possession after insert, ‘ passed to the dwelling-house of A. B. ‘ ——— in C. Having,’ &c. If the instrument is on a paper apart, which it will probably be, in this case, on account of the length of it, occasioned by the insertion of the precept, it will
be

be necessary to narrate the disposition fully ; after which the inventory will be narrated thus : ‘ As also *having*,
 ‘ and in his hands *holding*, the particu-
 ‘ lar inventory above mentioned, of the
 ‘ date of the said disposition, contain-
 ‘ ing the whole household furniture,
 ‘ horses, and others, therein mention-
 ‘ ed ; as the same also more fully
 ‘ bears.’ And then it will go on,
 ‘ Which disposition above written,
 ‘ containing therein the said precept of
 ‘ possession and inventory above men-
 ‘ tioned, the said ———, procurator
 ‘ for the said C. D. exhibited to the
 ‘ said ———, requiring him to
 ‘ put the office committed to him by
 ‘ the said precept to due execution :
 ‘ Which request being found reason-
 ‘ able by the said ——— he
 ‘ accepted of the said disposition and
 ‘ inven-

‘ed, and inventory above mentioned,
‘in all points,’ &c.

Instrument of Intimation of an Assignation.

At —, the — day of —
— years, in presence of me notary public and witnesses subscribing,
compeared as procurator for the within designed D. E. whose power of procuratory was sufficiently known to me notary public, and with us passed to the personal presence of the also within designed A. B. *having and holding* in his hands the principal assignation within written, of the date, tenor, and contents within mentioned. Which assignation the said

delivered to me notary public, to be publicly read over and intimated, and which being accordingly done to the said A. B. personally present, the said

as procurator foresaid, *protested* that the said assignation was duly and legally intimated, and that the said A. B. might not pretend ignorance thereof, or make payment of the sums thereby assigned to any other person than the said D. E. or others deriving right from him. *Whereupon* the said

as procurator foresaid, took instruments in the hands of me notary public subscribing. *These* things were so acted and done in the said A. B.'s personal presence, as aforesaid, betwixt the hours of ——— and ——— afternoon of the day, &c.

Instru-

Instrument of Intimation, at the Dwelling-house, and with other Variations on a paper apart.

At ———, the ——— day of ———
 ——— years, In prefence of me notary public and witnesses subscribing, *compeared* personally D. E. in F. assignee underwritten, and passed with us to the dwelling-house of A. B. ——— in C. *having*, and in his hands *holding*, an assignation, dated ———, made and granted by C. D. ——— in E. to him, *narrating*, that, *whereas* the said C. D. by his bill dated, &c. (and so on with the narrative of the assignation), and *subsuming*, that the said D. E. had made payment to him of the foresaid principal

pal sum of ———, and interest thereof, &c. *therefore* he made, constituted, and ordained, the said D. E. &c. *surrogating*, &c. at any time before granting hereof; as the said assignation, of the date foresaid, containing several other clauses, more fully bears. *Which* assignation above narrated the said D. E. delivered to me notary public, to be publicly read over and intimated; and which being accordingly done to the said A. B. at his dwelling-house, and a schedule left for him, signed by the said D. E. and me the notary, with his man-servant, to be given him, because we could not find himself personally; the said D. E. *protested* that the said assignation was duly and legally intimated, and that the said A. B. might not pretend ignorance thereof, nor make payment of the sums therein

con-

contained, to any other person than the said D. E. or others deriving right from him. *Whereupon, &c. These* things were so acted and done within the dwelling-house of the said A. B. betwixt the hours, &c.

Instrument of intimation of a translation or retrocession will be in the same terms, *mutatis mutandis.*

Instrument of Intimation that a Bill of Suspension is to be offered on Juratory Caution.

At ———, the ——— day of ———
——, in presence of me notary public, and witnesses subscribing, *appeared*

as procurator for

N n

A. B.

A. B. in C. who with us passed to the personal presence of C. D. in E. ; and, as the Lords of Council and Session have, by an act of sederunt, ordained, *made* to him due and lawful intimation, that the said A. B. was, upon the — day of — instant, to present to the said Lords a bill for suspension, upon juratory caution, of a charge given to him for payment to the said C. D. of the sum of —, (*as in the copy of charge*) *And protested*, that he might not pretend ignorance thereof. *Whereupon* the said
as procurator foresaid,
took instruments in the hands of me
notary public. *These* things were so
done, &c.

Instru-

Instrument of Vendition.

At —, the — day of —
 — years. In presence of me no-
 tary public and witnesses subscribing,
compeared personally C. D. — in
 —, and passed with us to the pier
 and harbour of —, where the ship
 called — was lying, and likewise
 to the personal presence of A. B. —
 in C. sole owner of the said ship; *ha-*
ving, and in his hands *holding*, a prin-
 cipal vendition, of date the —,
 made and granted by the said A. B. to
 the said C. D.; whereby, (for the cau-
 ses therein specified), the said A. B.
sold, alienated, dispoed, assigned, and
made over to, and in favours of, the

saïd C. D. his heirs, executors, or assignees, *All* and *whole* the foresaïd ship called —, presently lying in the harbour of —, with her masts, sails, anchors, cables, float boat, and other apparelling, and pertinents, with all right or interest he had, or could pretend thereto; as the saïd vendition, containing clause of warrandice, and severall other clauses, more fully bears. Which vendition above written the saïd C. D. exhibited and presented to the saïd A. B. and desired and required him, *propriis manibus*, to put him in possession of the saïd ship, float boat, masts, sails, anchors, tows, cables, and others above written. Which desire being reasonable, the saïd A. B. acquiesced in and received the saïd vendition into his hands, and delivered the same to me notary public, to be
read

read in presence of the said witnesses ;
 which I did. After reading and publishing of which vendition, the said A. B. *ex propriis suis manibus*, gave and delivered to the said C. D. real, actual, and corporal possession, of the said ship, float boat, masts, sails, cables, anchors, tows, and others above written, by giving and delivering to him the helm-pin, best anchor, ring, oar of the float-boat, and a piece of the cable, in his hands, and the mainmast, and one of the sails in his arms, as use is. *Whereupon*, and upon all and fundry the premisses, the said C. D. asked and took instruments in the hands of me notary public subscribing. These things were done on board the said ship, lying in the said harbour of ———, betwixt the hours of ——— and ——— forenoon, place, day, month, and year of

God above written, before and in presence of ——— and ———, witnesses to the premises, specially called and required.

*Instrument by the Master of a Ship
against the Freighters, for the
penalty stipulated by the Charter
Party.*

*At and within the port and harbour
of ———, aboard the good ship called
the ———, of which A. B. shipma-
ster in ——— is present master, the ———
day of ———, one thousand seven hun-
dred and eighty ——— years, and of his
Majesty's reign the ——— year. The
which day, in presence of me notary
public and witnesses subscribing, com-
peared*

peared personally the said A. B. ship-master foresaid, *having* a charter party of date the — day of — last, entered into betwixt the said A. B. and C. D. merchant in — ; by which charter party, exhibited and presented to me notary public, by the said A. B. he, for the sums of money, and other prestations therein, and after mentioned, *let* his said ship, &c. (narrate the charter party to the clause of performance, under a penalty) as the said charter party, of the date foresaid, more fully bears. *After* public reading of which charter party, in presence of the witnesses after named, the said A. B. *represented*, That, in terms, and in implement of his part of the charter party above recited, he, with his ship and crew, did arrive in the said port and harbour of —, upon the —

—— day of —— current, which he notified to the said C. D. ; and that he was ready to receive and take on board the said loading of —— ; but the said loading not being put on board, albeit the lie-days above mentioned be run out ; *therefore* the said A. B. *protested* against the said C. D. for breach of charter party, and that he might not only be liable to him for the sum of ——, for each day he shall thereafter be detained ; but also for the penalty above expressed, incurred by him through failzie ; and of all other cost, skaith, damage, and expences, he, his ship, or crew, shall happen to sustain, by and thro' his being detained longer than the lie-days above specified. *Whereupon*, and upon all and sundry the premisses, the said A. B. asked and took instruments in the hands of me
the

the said notary public subscribing. *These* things were done betwixt the hours of — and — forenoon, place, day, month, year of God, and of his Majesty's reign, *respectively* above written, before and in presence of — and —, witnesses to the premisses, specially called and required.

Instrument against Wind and Weather.

At, &c. Compeared A. B. — in C. master of the good ship called the —, and with us passed to the personal presence of C. D. provost of the borough of —, and one of his Majesty's Justices of the Peace within the shire of —; and there *represented*, that, whereas the said A. B. as
master

master of the said ship, had sailed with her, in good order and condition, from the port of ———, for the port of ———; and in his passage, upon the ——— day of ——— last, about the hour of ———, in the latitude of ——— degrees and ——— minutes, there arose and happened a prodigious storm of wind (a) and rain, which continued for the space of ———: And the ship being in imminent hazard, and several times near overfet, he the said master having advised with the mate and crew, found and concluded there was no way or means, in human probability, could be fallen upon to save the ship, mens lives, or cargo, but by lightening the ship, and throwing over some of the heavy goods; and accordingly he the said master, mate, and crew, were necessitate, to prevent shipwreck,
to

to throw over the following goods, viz. (here the several goods, and their marks whereby they are distinguished, are mentioned) ; whereupon, in presence of the mate and crew, he protested at the mainmast against the wind and storm, and that it was the greatest hazard and necessity made him lighten the ship, and throw over the goods above mentioned, and that therefore he and his crew might be free of the damage and loss therethrough sustained, in regard it could neither be imputed to any defect or fault in the ship or mariners, but allenarly to the storm ; and, for verifying what was above represented, adduced and presented F. G. H. J. and J. K. three of the mariners then on board the ship with him, and desired and craved that the said C. D. might call the witnesses by their names,
and

and take their oaths and depositions, upon the facts above represented. And the said C. D. having accordingly called the said F. G. H. J. and J. K. severally ; and they being all solemnly sworn and examined anent the facts above represented, they deposed that the facts above related by the said A. B. shipmaster foresaid, were real, just, and true, and that was the truth, as they should answer to God. *Whereupon* (b) the said A. B. of new, again *protested* against the said storm, and that he and his crew might be free of the damage and loss of the goods thrown over board, as said is, in regard the lightning of the ship, by throwing over the same, was absolutely necessary for preventing shipwreck, and saving the men's lives, and remainder of the cargo ; *and thereupon* took instruments in the
the

the hands of me notary public subscribing. *Thése* things were done, &c.

If the instrument be taken against wind and weather, when, by reason of the storm, water beats into the hold, and damnifies the goods, say, ‘blowing
 ‘from northeast to west and by north,
 ‘which had driven the ship upon the
 ‘shore, along the coast from ——
 ‘to ——, had he not, for preservation of the men’s lives, ship, and cargo, carried as much sail as the storm
 ‘of wind would possibly allow, to clear
 ‘the leeward shore, and get into a harbour, which laid the ship so along,
 ‘and the sea making a passage over
 ‘her, made him the said master afraid
 ‘of damage in the hold ; whereupon,
 ‘in presence of the mate and crew, he
 ‘protested at the mainmast against the

O o

‘ sea

‘ sea and storm of wind aforesaid, a-
 ‘ bout ——— of the clock that after-
 ‘ noon ; after which he with no small
 ‘ difficulty got into the harbour of
 ‘ ———, where she now lies : And the
 ‘ said A. B. shipmaster foresaid, for
 ‘ verifying what was above represented,
 ‘ adduced and presented,’ &c. (as in
 the preceding instrument, and at (b),
 ‘ the said A. B. of new again protested
 ‘ against the storm and wind, and that,
 ‘ if any damage has happened by wa-
 ‘ ter getting into the hold, he and his
 ‘ crew might be free thereof, the
 ‘ same not being occasioned by any
 ‘ insufficiency of the ship, or fault or
 ‘ neglect of the master and crew, but
 ‘ merely by the violence of the storm ;
 ‘ and *thereupon* took instruments,’ &c.
 (as before).

Instru-

Instrument taken by the Tenant upon giving in a Renunciation of his Tack to the Landlord.

At ———, the — day of ——— years, which day, in presence of me notary public and witnesses subscribing, *compeared* personally C. D. in E. and with us passed to the personal presence of A. B. Esq; of C. *having* and *holding* in his hands a renunciation of the lands of E. dated the — day of ———, whereby the said C. D. (for the causes therein specified,) *renounced*, *simpliciter upgave*, and *overgave*, from him, his heirs and successors, *all* and *whole* his occupation and possession of the said lands of E, with the perti-

O o 2 nents,

nents, set in tack to him by the said A. B. conform to tack betwixt them, dated ———, and that in favour of the said A. B. his heirs or assignees, &c. (narrate the renunciation to the clause of registration, and say,) as the said renunciation more fully bears. After exhibiting, producing, and public reading of which renunciation, the said C. D. tenant foresaid, *gave up* and *delivered* the same to the said A. B. who accepted thereof, and discharged the said C. D. of the said tack and whole obligations and prestations thereby incumbent upon him. *Whereupon* the said C. D. asked and took instruments in the hands of me notary public subscribing. *These* things were so done, place and date foresaid, before and in presence of ——— and ———, witnesses

nesses to the premisses, specially called and required.

Instrument upon a Bond of Presentation.

At ———, the ——— day of ———, ———, *In presence* of me notary public and witnesses subscribing, *compeared* C. D. messenger at arms, to whom the bond of presentation after mentioned is made and granted, and passed with us to the house of R. C. ——— in ———, the place of presentation underwritten, *having and holding* in his hands a bond of presentation, granted by D. E. in F. dated the ——— day of ——— ——— whereby, &c. (narrate the bond of presentation). Which bond of presentation above narrated, the said C. D. messenger foresaid, and as procurator

for the said J. K. whose power of procuratory was sufficiently known to me notary public exhibited, presented, and delivered to me the said notary public, to be openly read and published in presence of the witnesses underwritten, all which I accordingly did. And, after reading and publishing the said bond of presentation, and attending and waiting at the place above written, from the hour of — to the hour of —, upon the town-clock of the said borough, the day foresaid, the said C. D. messenger and procurator foresaid, in regard the said D. E. had failed to present the said F. G. this day, time and place mentioned in the said bond of presentation, *protested* that the said D. E. may be liable for payment of the foresaid principal sum of —, annualrents thereof,

of, and penalty above written. *Whereupon* he took instruments in my hands, *These* things were so done, place and date foresaid, before and in presence of ——— and ———, witnesses to the premises, specially called and required.

Instrument by a Debtor against a Creditor forcing payment of a controverted Debt.

At, &c. Compeared personally C. D. ——— in E. and with us passed to the personal presence of A. B. in C. and there represented and declared, *That* albeit the said A. B. had obtained decret and sentence, at his instance, against

gainst him, before ——— and ———, whereby he was (for the cause therein specified), *decerned* and *ordained* (here take in the decerniture, and say) upon which decret the said A. B. having raised horning, and, by virtue thereof, caused charge the said C. D. for avoiding the danger whereof, he offered a bill of suspension of the said charge before the Lord ——— Ordinary on the bills for the time, which his Lordship thought fit to refuse; yet nevertheless, and notwithstanding thereof, the said C. D. declared, that he was convinced in his conscience, that the said decret was unjust, and neither founded upon law nor justice, and that he was wrongously compelled to pay the sums therein contained, by mere force of diligence, to shun imprisonment: *And* therefore he the said C. D.

pro-

protested, That his paying the sums contained in the said decret shall no-
wise be interpreted to be any homolo-
gation or approbation of the same, or
of the diligence following thereupon ;
but that it shall be lawful to him to
quarrel and reduce the same, upon any
competent grounds in law, and to in-
sist for and recover repetition of the
said sum wrongously extorted from
him *vi et metu carceris*, in manner a-
bove mentioned, as accords to law.
Whereupon, &c.

*Instrument taken on a Precept ken-
ning a Woman to her Terce.*

At ———, the ——— day of ———
—— in presence of me notary public
and

and witnesses subscribing, *compeared*
personally as procurator
and attorney for C. B. relict of the de-
ceased A. B. of C. (whose power of
procuratory was sufficiently known to
me notary public), who with us and
bailie in that part,
specially constitute by the precept of
kenning after insert, passed to the
ground of the lands and others after
mentioned. The said
procurator and attorney foresaid, *ha-*
ving, and in his hands *holding*, a pre-
cept of kenning, directed by the sheriff-
depute of the sheriffdom of ———,
for cognoscing and entering the said
C. B. to her terce of all and whole the
lands and others after mentioned, of
the date, tenor, and contents under
written. Which precept of kenning
the said procurator
fore-

foresaid, exhibited and presented to the
said bailie in that part,
specially constitute by the said precept
of kenning, requiring him to put the
same to due execution ; which request
the said bailie finding reasonable, he
accepted the said precept, and deliver-
ed the same to me notary public, to be
read and published to the witnesses,
which I accordingly did : And where-
of the tenor follows. (Insert the pre-
cept). After reading and publishing
of which precept, the said

bailie foresaid, by virtue of
the said precept and office thereby
committed to him, *cognosced, kenned,*
and *entered* the said C. B. for her life-
rent-use allenary, during all the days
of her lifetime, in and to her third part
of *all and whole* the lands and others
above mentioned, and here held as re-
peated,

peated, *brevitatis causa*, lying as afore-
said, wherein her said deceased spouse
died last vest and seised, as of fee; and
that by delivery to the said

as procurator for and in name
of the said C. B. of earth and stone of
and upon the ground of the said lands,
respective and successive. Whereupon,
and upon all and sundry the premisses,
the said as procurator
foresaid, asked and took instruments
in the hands of me notary public sub-
scribing. These things, &c.

This instrument will depend very
much upon the terms of the precept.

Instrument

*Instrument by a Vassal against his
Superior, upon making him the
first offer of the lands.*

At, &c. Compeared personally A. B.
of C. proprietor of the lands of ———, lying within the parish of ———, and sherrifdom of ———; and with us passed to the personal presence of C. D. Esq; of E. superior of the said lands, and there he said A. B. did make true and lawful offer to the said C. D. of the said lands of ———, for the sum of ——— Sterling, which is the price truly offered by F. G. in H. for the same, in terms of a prohibitory clause in the original rights and inest-

P p

ments

ments of the said lands, whereby it is provided and declared, that it shall be lawful to the proprietors thereof to sell the same, without making the first offer thereof to the superior ; he always giving as much for the said lands as any other person : And, in respect the said C. D. refused to accept of the said offer, to make payment to the said A. B. of the said sum of ———, offered therefor by the said F. G. as said is. *Therefore* the said A. B. *protested*, that the prohibitory clause and condition of the said original rights was purified and implemented by the offer above written, and that it may be lawful to him, or any of his successors in time coming, to sell and dispose of the lands and others foresaid, at pleasure, and freely, without any step or hinderance whatsoever, to any person
or

or persons, they shall think fit and expedient. *Whereupon, &c.*

It seems doubtful whether this offer would have the effect protested for, though it might validate an immediate sale to F. G. or any other person, at the sum above mentioned.

Instrument of Ratification by a Wife.

At ———, the ——— day of ———
——— years. In presence of J. M.
Esq; of B. one of his Majesty's justices
of the peace for the county of ———,
and also in presence of me notary public,
clerk chosen to this ratification,
and witnesses subscribing, *compeared*
personally E. D. spouse to C. D. of
E.

E. who, out of the presence of her said husband, judicially acknowledged, that she had this day signed a disposition, written upon stamped paper, and consisting of — pages, along with the said C. D. her husband, of the lands of —, lying in the parish of —, and shire of —, as therein mentioned, in favours of G. H. in J. ; and declared that she did the same freely and willingly, and of her own accord : And not only ratified and approved, and hereby ratifies and approves, of the said disposition ; *but* also, being solemnly sworn and examined, by the said justice of peace, *depones*, that she was nowise coerced or compelled by her said husband, to the making and granting of the said disposition ; and that she will never quarrel or impugn the same, either in judgment,

ment, or furth thereof ; as she shall answer to God. *Whereupon*, and upon all and sundry the premisses,

as procurator for the said G. H. asked and took instruments in the hands of me notary public subscribing ; before and in presence of ——— and ———, witnesses to the premisses, specially called and required.

—— witness.

E—— D——

—— witness.

J. M. J. P.

Nuda Veritas.

A—— M—— N.P.

F I N I S.

E R R A T A.

- Page 279. l. 9. *for parts read ports*
300. 9. *dele by*
305. 13. 14. *for other read their*
307. 6. *for "written tacks," read "a
written tack."*
311. 16. *for translater read translation*
341. 5. *for remove read receive*
365. at the bottom, *add defender of
the faith*
371. 16. *dele blank*
391. 1. *for hold read held.*



